

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

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FILED

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UNITED STATES OF AMERICA,

Plaintiff,

VS.

DON I. NELSON, et al.,

Defendants.

**Richard M. Lawrence, Clerk
U.S. DISTRICT COURT**

) CASE NO. 89-C-775-E

ORDER

Upon the motion of the plaintiff, United States of America, to which there is no objection, it is hereby **ORDERED** that all claims against defendant Denni Enterprises, Inc., be dismissed without prejudice, the parties to bear their own costs and attorneys' fees.

Dated this 10th day of Feb, 1992.

REMARKS

UNITED STATES DISTRICT JUDGE

SUBMITTED BY:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 10 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

GEORGE HOLTER,

Plaintiff,

vs.

No. 91-C-0087-E


WILLIAM HAROLD TYDINGS,
GEORGE FLETCHER,
RICHARD D. HICKS,

Defendants.

ADMINISTRATIVE CLOSING ORDER

IT IS ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within 20 days that settlement has not been completed and further litigation is necessary.

ORDERED this 10th day of February 1992.


CHIEF JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GAYLA DENISE CRAIN,
Petitioner,

vs.

RICHARD HUDLEY, Superintendent
of Tulsa Community Treatment
Center, and THE ATTORNEY
GENERAL OF OKLAHOMA,

Defendants.

No. 91-C-336-E ✓

FILED

FEB 10 1992

O R D E R

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

The Court has for consideration the Report and Recommendation of the Magistrate filed on September 27, 1991. After careful consideration of the record and the issues, including the briefs and memoranda subsequently filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

Principles of federalism and the doctrine of abstention, so important in our republican form of government, will not allow a Federal Court to upset a state conviction based on state law. The Oklahoma Courts are alone responsible for applying and interpreting state precedent as long as no rights guaranteed by the federal Constitution are violated. Fourth Amendment claims are the exception to the above rule. According to Stone v. Powell, 428 U.S. 493 (1976), "where a state has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the


ground that evidence obtained in an unconstitutional search and seizure was introduced at his trial."

In addition, the Equal Protection claim asserted by Petitioner is inapplicable here. Wiggin v. State is distinguishable -- as shown by the Magistrate's Report and Recommendation. But even if it were not as obviously distinguishable as it is, the Oklahoma Court of Criminal Appeals has the power to apply its own precedent or, directly or indirectly, overrule it.

IT IS THEREFORE ORDERED that Petitioner's request for oral argument be denied.

AND IT IS FURTHER ORDERED that Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be denied too.

ORDERED this 7th day of February, 1992.


CHIEF JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT

FILED

FEB 10 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

**LOUIS W. SULLIVAN, M.D.,
SECRETARY OF HEALTH AND
HUMAN SERVICES.**

Defendant.

CASE NO. 91-C-384-E

Upon the motion of the defendant, the Secretary of Health and Human Services, to which there is no objection, it is hereby ORDERED that this case be remanded to the Secretary of Health and Human Services for an award of disability benefits to the plaintiff, from February 4, 1988, plaintiff's alleged onset date for Title II purposes.

DATED this 10th day of February, 1992.

S/ JAMES O. ELLISON

JAMES O. ELLISON
Chief United States District Judge

SUBMITTED BY:

TONY M. GRAHAM
United States Attorney

Phil Primm

PHIL PINNELL, OBA #7169
Assistant United States Attorney

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

LEAVELL RESOURCES CORP.,

Plaintiff,

vs.

PAYSAR OIL PROPERTIES, INC.,
ROBERT GORDON EQUIPMENT, INC.,
ROBERT GORDON OIL CO., ELDON
individual, DIXIE GORDON, an individual,
ASSOCIATED NATURAL GAS, INC., and
LINGAS CO.

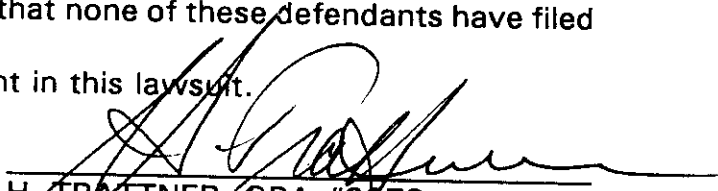
Defendants.

Case No. 91-C-850 E

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FEB 10 2001
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
OKLAHOMA CITY, OKLAHOMA

NOTICE OF DISMISSAL

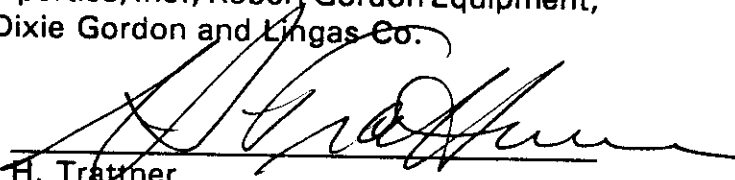
The plaintiff, Leavell Resources Corp., pursuant to Rule 41(a), Federal Rules of Civil Procedure, does hereby dismiss all its claims against defendants, Paysar Oil Properties, Inc., Robert Gordon Equipment, Inc., Robert Gordon Oil Co., Eldon Gordon, Dixie Gordon, and Lingas Co. with prejudice to the refiling of same at a later date against these defendants for the reason that this dispute has been settled among them. The plaintiff further advises the Court that none of these defendants have filed an answer or a motion for summary judgment in this lawsuit.


H. TRATTNER, OBA #9879
CHARLES B. DAVIS, OBA #2189
Suite 165, 5555 N.W. Grand Boulevard
Oklahoma City, OK 73112
(405) 947-6380

Attorneys for Plaintiff
Leavell Resources Corp.

CERTIFICATE OF MAILING

I, Patrick H. Kernan, hereby certify that on the ____ day of January, 1992, 1991, I mailed a true and correct copy of the foregoing to R. Brent Blackstock, Blackstock & Blackstock, 5310 E. 31st Street, Suite 520, Tulsa, OK 74135, and Patrick H. Kernan, Kernan & Kernan, 4500 South Garnett, Suite 900, Tulsa, OK 74136, attorney for defendants, Paysar Oil Properties, Inc., Robert Gordon Equipment, Inc., Robert Gordon Oil Co., Eldon Gordon, Dixie Gordon and Lingas Co.


H. Trattner

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TRACEY W. LAYTON,

Plaintiff,

vs.

DEE W. ROSELL and
JEFFREY J. HARRISON,

Defendants.

No. 91-C-945-B

O R D E R


Before the Court is the motion of the Defendants for partial dismissal. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 against the Defendants, two Tulsa police officers, alleging that Defendants' conduct in effecting Plaintiff's arrest on December 30, 1990, constituted excessive force. Paragraph 6 of Plaintiff's Complaint alleges in part that the "excessive use of force constitutes a deprivation of a right secured by the United States Constitution, Amendments IV and XIV"

In the present motion, Defendants assert that the Complaint fails to state a claim under the Fourteenth Amendment and to that extent should be dismissed pursuant to Rule 12(b)(6) Fed.R.Civ.P. In support, Defendants point to Graham v. Connor, 490 U.S. 386 (1989), which held that an excessive force claim of this type is to be analyzed under the Fourth Amendment's "objective reasonableness" standard rather than under a substantive due process standard. Id. at 395. *See also*, Zuchel v. Spinharney, 890 F.2d 273, 274 n. 2 (10th Cir. 1989).

Plaintiff responds by conceding that the Fourth Amendment is the appropriate standard, and stating that the Complaint's invocation of the Fourteenth Amendment was merely an acknowledgment of the incorporation doctrine which made the Bill of Rights applicable to the states. Therefore, the motion will be GRANTED to the extent that it is hereby clarified and understood between the parties that the Fourth Amendment provides the standard for ultimate disposition of Plaintiff's claim.

It is the order of the Court that the motion of the Defendants for partial dismissal is hereby GRANTED as to any claim directly under the Fourteenth Amendment of the United States Constitution.

IT IS SO ORDERED this 10th day of February, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB 10 92

STATE FARM FIRE AND CASUALTY CO.,)
A FOREIGN CORPORATION,)

PLAINTIFF,)

-vs-)

THE CITY OF TULSA, A MUNICIPAL)
CORPORATION,)

DEFENDANT.)

Richard L. ...
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CASE NO. 91-C-854 B

ORDER

NOW, on this 10th day of Feb., 1992, for
good cause shown, the Court finds the Complaint of the plaintiff,
State Farm Fire and Casualty Co., should be allowed to be dismissed
without prejudice.

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

APPROVED:

SELMAN AND STAUFFER, INC.

BY: Joseph R. Roberts

NEAL E. STAUFFER, OBA #13168

JOSEPH R. ROBERTS, OBA #7639

700 Petroleum Club Bldg.

Tulsa, OK 74119

ATTORNEYS FOR PLAINTIFF

David L. Pauling
DAVID L. PAULING
Assistant City Attorney
200 Civic Center #316
Tulsa, OK 74103

ATTORNEY FOR DEFENDANT

FILED

FEB 10 1992

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE FARM FIRE AND CASUALTY CO.,)
A FOREIGN CORPORATION,)

PLAINTIFF,)

-vs-)

THE CITY OF TULSA, A MUNICIPAL)
CORPORATION,)

DEFENDANT.)

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

CASE NO. 91-C-671-E

ORDER

NOW, on this 7th day of Feb, 1992, for good
cause shown, the Court finds the Complaint of the plaintiff, State
Farm Fire and Casualty Co., should be allowed to be dismissed
without prejudice.

IT IS SO ORDERED.

W. JAMES O. FULSON

UNITED STATES DISTRICT JUDGE

APPROVED:

SELMAN AND STAUFFER, INC.

BY:

Joseph R. Roberts
NEAL E. STAUFFER, OBA #13168
JOSEPH R. ROBERTS, OBA #7639
700 Petroleum Club Bldg.
Tulsa, OK 74119

ATTORNEYS FOR PLAINTIFF

David L. Pauling
DAVID L. PAULING
Assistant City Attorney
200 Civic Center, #316
Tulsa, OK 74103

ATTORNEY FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 10 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

BRIAN COWAN,

Plaintiff,

vs.

STATE OF OKLAHOMA EX REL.
DEPARTMENT OF CORRECTIONS,


Defendant.

No. 91-C-837-E ✓

ORDER

This matter is before the Court on Defendant's Motion to Dismiss pursuant to Rule 12(b)(6) Fed.R.Civ.P. or, in the alternative, for summary judgment under Rule 56, Fed.R.Civ.P. The Court has reviewed the record, the arguments of the parties and the applicable law and finds that Plaintiff's claim does state a cause of action under the Fair Labor Standards Act; therefore Defendant's motion should be denied insofar as it rests upon the authority of Rule 12(b)(6). The Court further finds that material facts are in dispute as to whether Plaintiff's position is exempt from the reaches of the F.L.S.A.; therefore Defendant's motion, in the alternative, for summary judgment should also be denied.

So ORDERED this 10th day of February, 1992.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

~~FILED~~

~~FEB 10 1992~~

~~Richard M. Lawrence, Clerk
U.S. DISTRICT COURT~~

ANNABELLE WINTERS d/b/a
SHARP'S PAWN SHOP,

Plaintiff,

vs.

BOARD OF COUNTY
COMMISSIONERS OF OSAGE
COUNTY, OKLAHOMA, et al.,

Defendants.

No. 90-C-508-E

~~FILED~~

~~FEB 13 1992~~

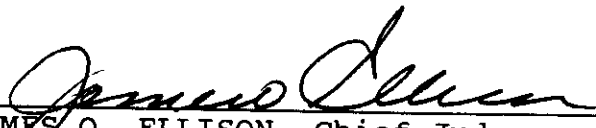
~~Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA~~

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate. That Report and Recommendation, filed May 15, 1991, was affirmed by Judge Cook on the grounds that no objections had been filed thereto. Subsequently, it was learned that Plaintiff had not received a copy of the Magistrate's Report and Recommendation. Therefore, Judge Cook vacated his Order Affirming and granted Plaintiff time to file her objections. In the interim, the case has been transferred to the undersigned. Having reviewed the record and the relevant authorities this Court now affirms the Magistrate's Report and Recommendation in all respects.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Summary Judgment is denied; Defendants' Motion for Summary Judgment is granted.

So ORDERED this 16 day of February, 1992.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 10 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

PATTY ANN FREEMAN,
Plaintiff,

vs.

BARBARA SNOW, et al.,
Defendants.

No. 90-C-19-E ✓

FILED

FEB 13 1992


Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This matter is before the Court upon the Magistrate's Report and Recommendation that the Defendants' Motion to Dismiss be granted. Specifically, the Magistrate noted that Petitioner had failed to respond to Defendants' motion as directed by the Magistrate. Pursuant to Local Rule 32(D), parties were given ten (10) days to file any objections to the Report with supporting brief. The Court finds that the Magistrate's Report and Recommendation should be affirmed.

IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss is granted.

So ORDERED this 10th day of February, 1992.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ANNABELLE WINTERS d/b/a
SHARP'S PAWN SHOP,

Plaintiff,

vs.

BOARD OF COUNTY
COMMISSIONERS OF OSAGE
COUNTY, OKLAHOMA, et al.,

Defendants.

No. 90-C-508-E

FILED

FEB 13 1992

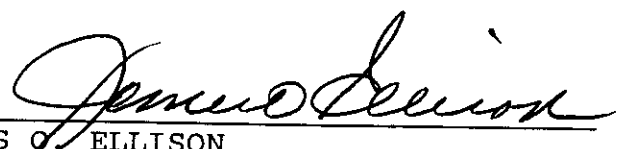
**RICHARD M. LAWRENCE, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

JUDGMENT

This action came on for consideration by the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered,

IT IS THEREFORE ORDERED that the Plaintiff take nothing from the Defendants, and that the action be dismissed on the merits.

So ORDERED this 12th day of February, 1992.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
FEB 07 1992

Richard L. [unclear] Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

RAYMOND E. CESMAT,

Plaintiff,

vs.

No. 90-C-1056-B

MICHAEL'S RANCH, a Nevada
Limited Partnership,
AMERICAN BANK & TRUST COMPANY,
A. LEROY FOSTER and A. S.
DENNISON,

Defendants.

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby entered in favor of the Defendant, Michael's Ranch, a Nevada limited partnership, and against the Plaintiff, Raymond E. Cesmat, denying Plaintiff's claim for foreclosure of the subject real property. Plaintiff's action against said Defendant is hereby dismissed. Further, the Court concludes the first mortgage lien on said property is held by John Hancock Mutual Life Insurance Company; the second mortgage lien on the subject real property is held by the American Bank and Trust Company of Sapulpa, Oklahoma, and a third lien in accordance with a deed of trust to said real property is in A. Leroy Foster and A.S. Dennison. The parties shall pay their own respective attorneys fees and any claim for costs shall be timely submitted pursuant to Local Rule 6.

DATED this 7th day of February, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT COURT

FILED

FEB 7 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

GLEN HURT and SUE HURT

PLAINTIFFS

v.

NO. 91-C-175-~~CE~~

PETERSON FARMS, INC.

DEFENDANT

ORDER OF DISMISSAL

On this 7th day of Feb, 1992, comes on for consideration the joint Motion of all parties for dismissal of the above styled and numbered cause of action with prejudice.

From the motion and the file the Court is well advised in the premises and herewith orders the above styled and numbered cause of action dismissed with prejudice.

IT IS SO ORDERED this 7th day of Feb, 1992.

S/ JAMES O. ELLISON
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILE

FEB 7 1992

LEONARD ARABIA, et al,

Richard M. Lawrence, CL
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Plaintiff(s),

vs.

No. 89-C-91-B

GIANT PETROLEUM, INC., et al,

Defendant(s).

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

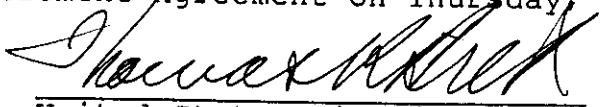
The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

IT IS SO ORDERED this 6th day of February, 1992.

IT IS FURTHER ORDERED: that this case is set for hearing on Plaintiffs Motion to Enforce Settlement Agreement on Thursday, March 12, 1992 at 2:00 p.m.


United States District Judge
THOMAS R. BRETT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 7 1992

ROGER ALLEN LONG and DONNA RAE
HAMILTON,

Plaintiffs,

vs.

EDWARD L. JOHNSON, d/b/a CANEY
VALLEY SPEEDWAY, and GARY GORBY,

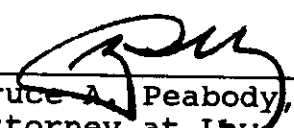
Defendants.

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

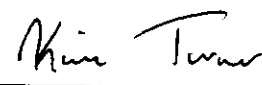
No. 91-C-450-E

STIPULATION OF DISMISSAL WITH PREJUDICE

All parties to the above entitled action, by and through their
counsels of record, hereby stipulate that they dismiss any and all
claims, counterclaims or other causes of action which have been
asserted in the past or which are capable of assertion in the
future with prejudice to the right of refiling the same.


Bruce A. Peabody, OBA #6995
Attorney at Law
Post Office Box 2006
Bartlesville, OK 74005
(918) 336-4100

ATTORNEY FOR PLAINTIFFS/
THIRD PARTY DEFENDANTS


S. M. Fallis, Jr., OBA # 2813
W. Kirk Turner, OBA # 13791
NICHOLS, WOLFE, STAMPER,
NALLY & FALLIS, INC.
400 Old City Hall Building
124 East Fourth Street
Tulsa, Oklahoma 74103-4004
(918) 584-5182

AND

Steve Conatser, OBA # 1839
CONATSER & CONATSER
415 South Dewey, Suite 205
Bartlesville, Oklahoma 74003
(918) 336-3333

ATTORNEYS FOR DEFENDANTS/
THIRD PARTY PLAINTIFFS

CERTIFICATE OF MAILING

I hereby certify that on the 7th day of February, 1992, I mailed a true and correct copy of the above and foregoing pleading, with proper postage fully prepaid thereon, to:

Bruce A. Peabody
P.O. Box 2006
Bartlesville, OK 74005

Kirk Turner
W. Kirk Turner

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 07, 1992

RECEIVED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JINX THOELE,

Plaintiff,

v.

PIONEER LIFE INSURANCE
COMPANY OF ILLINOIS, an
Illinois Corporation, and
NORMAN WYATT,

Defendants.

Case No. 91-C-446-B

O R D E R

This matter comes on for consideration upon the Motion to Remand filed by Plaintiff, Jinx Thoele, and upon Defendant's Objection to Remand.

Plaintiff filed suit in Oklahoma State District Court in and for Tulsa County on May 30, 1991, alleging that Defendants, Pioneer Life Insurance Company and Norman Wyatt, improperly rejected claims filed by Plaintiff for medical care and treatment. Plaintiff's state action included claims for breach of contract, bad faith, and negligence.

Defendants removed the case on June 25, 1991, on grounds that this Court has original jurisdiction over Plaintiff's claims due to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"). Plaintiffs filed a Motion to Remand pursuant to 28 U.S.C. §1447(c).

The issues before the Court are whether Pioneer Life Insurance Company's policy is an employee welfare benefit plan under the protection of ERISA, and, if so, whether ERISA pre-empts the state law claims. Because the Court finds that the insurance policy

issued by Pioneer is not an ERISA plan, a determination of pre-emption is not necessary.

An "employee welfare benefit plan" is defined under ERISA as:

[a]ny plan, fund or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability . . .

29 U.S.C. §1002(1).

The court in Fort Halifax Packing Co., Inc. v. Coyne, 482 U.S. 1 (1987) set out the legislative intent regarding the term "plan":

Congress intended pre-emption to afford employees the advantages of a uniform set of administrative procedures governed by a single set of regulations. This concern only arises, however, with respect to benefits whose provision by nature requires an ongoing administrative program to meet the employers' obligation. It is for this reason that Congress pre-empted state laws relating to plans rather than simply to benefits.

Pursuant to authority granted in 29 U.S.C. §1135, the Secretary of Labor has issued regulations further defining and excluding certain insurance programs from the umbrella of ERISA coverage. The purchase of insurance will not be treated as an Employee Welfare Benefit Plan under ERISA if all of the following are satisfied:

- (1) No contributions are made by an employer or employee organization;
- (2) Participation [in] the program is completely voluntary for employees or members;
- (3) The sole functions of the employer or employee

organization with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees or members, to collect premiums through payroll deductions or dues checkoffs and to remit them to the insurer; and

(4) The employer or employee organization receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deductions or dues checkoffs.

29 C.F.R. §2510.3-1(j).

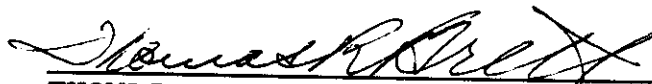
In the instant case, the Court finds that all four criteria have been met. There is no indication in the record that the employer, Harvard Terrace, made contributions to the plan; on the contrary, premiums were paid through deduction of plaintiff's salary. Participation by the plaintiff was voluntary. The sole function of Harvard Terrace was to collect and remit the premium by payroll deduction, without endorsing the plan; in fact it endorsed the Blue Cross and Blue Shield plan in which other employees participated but which the plaintiff refused as too expensive. Finally, there is no evidence that Harvard Terrace received consideration in connection with the program.

The Defendant relies on Kanne v. Connecticut General Life Ins. Co., 867 F.2d 489 (9th Cir. 1988) for the proposition that an ERISA plan exists where the employer only performs minor administrative tasks. However, central to the holding in Kanne was that the employer endorsed the plan within the meaning of 29 C.F.R. §1510.3-1(j)(3). Where the employer's sole involvement is the collection and remittance of premiums, the employer has not established or maintained a plan within the definition of 29 U.S.C. §1002(1).

Otto v. Variable Annuity Life Ins., 814 F. 2d 1127 (7th Cir. 1986),
cert. denied, 486 U.S. 1026 (1988).

The Court concludes that the insurance plan issued by the Defendant was not maintained or established by the Plaintiff's employer and thus was not subject to the provisions of ERISA. The Court further concludes that this Court does not have subject matter jurisdiction to decide this action. Plaintiff's Motion to Remand should be and is hereby SUSTAINED.

IT IS SO ORDERED THIS 7th day of February, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
FEB 7 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CHARLES WALDEN,

Plaintiff,

v.

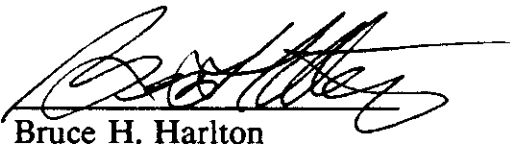
Case No.: 90-C-724-B

UNUM LIFE INSURANCE COMPANY
OF AMERICA,

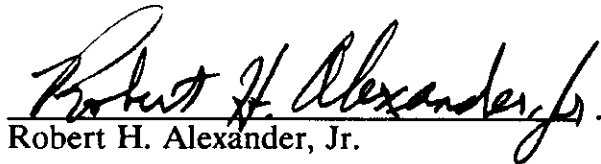
Defendant.

STIPULATED DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, plaintiffs stipulate to the dismissal of the instant action against Unum Life Insurance Company of America, with prejudice.

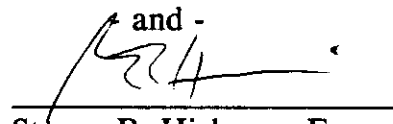


Bruce H. Harlton
1104 East 21st Place
Tulsa, Oklahoma 74114



Robert H. Alexander, Jr.

- of the firm -

and -


Steven R. Hickman, Esq.
Frazier & Frazier
1700 Southwest Boulevard
Suite 100
Post Office Box 799
Tulsa, Oklahoma 74101

The Law Office of
Robert H. Alexander, Jr., p.c.
Post Office Box 868
Oklahoma City, Oklahoma 73101-0868
(405) 232-0803

ATTORNEYS FOR DEFENDANT
UNUM LIFE INSURANCE COMPANY OF
AMERICA

ATTORNEYS FOR PLAINTIFF
CHARLES WALDEN

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 6 1992

MARY BULLOCK,

Debtor/Appellant,

v.

CLARK DAVENPORT SNELL, et al.,

Appellees.

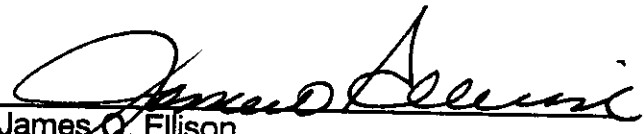
No. 91-C-194-E ✓

Bankruptcy No. 89-01413-C

ORDER DISMISSING APPEAL

On this 6th day of February, 1992, the motion of Debtor/Appellant Mary Bullock comes before the Court requesting that the Court dismiss appellant's appeal. Being fully advised of the premises, the Court finds that the motion should be granted.

IT IS THEREFORE ORDERED that Debtor/Appellant's appeal is dismissed.


James O. Ellison
U.S. District Judge

Dism-ND.Ord

IN THE UNITED DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 6 1992

FEDERAL DEPOSIT INSURANCE CORPORATION,
in its corporate capacity,

Plaintiff,

vs.

HENDERSON HILLS SHOPS, INC.,
et al.,

Defendants.

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

No. 89-C-144-E

AGREED JUDGMENT

This cause coming on for hearing this 6th day of February, 1992, before the undersigned Judge, the Plaintiff appearing by and through its attorneys of record and the subject Defendant parties appearing pro se, and it appearing to the Court that this is a suit upon a promissory note, and for foreclosure of a mortgage upon real estate securing the same, which said real estate is located in the County of Creek, State of Oklahoma;

It further appearing to the Court that due and legal service was properly obtained by serving the undersigned defendants with summons herein more than 20 days prior to this date;

And it further appearing to the Court that the defendants Tillman M. Hershberger, Raymond Doyal Hoover, and Robert J. Nale have answered and admitted the allegations of the Complaint, the Court further finds and adjudges as follows:

1. The subject Defendants, Tillman M. Hershberger, Raymond Doyal Hoover, and Robert J. Nale, are individuals residing in Creek County, Oklahoma. Jurisdiction and venue are proper in this judicial district.

2. The real property involved in this matter is located in Creek County, State of Oklahoma.

3. On or about August 21, 1982, Defendant Henderson Hills Shops, Inc. executed a promissory note in the principal sum of \$320,000.00 in favor of Century Bank (the "Note").

4. As of the 30th day of August, 1991, the outstanding principal balance of the Note is \$233,333.75 and the accrued interest as of the same date is \$128,034.04. Interest continues to accrue thereon in accordance with the terms of the Mortgage at the rate of \$102.28 per diem.

5. FDIC, in its corporate capacity, is successor to all of the Bank's right, title and interest in the Note and all related mortgages, security agreements and guaranties.

6. Although demand has been made upon the Defendant Henderson Hills Shops, Inc. by FDIC, Defendant Henderson Hills Shops, Inc. has failed to pay the indebtedness due pursuant to the Note, and is in default thereunder.

7. Pursuant to the terms of the Note, FDIC has previously declared and does again hereby declare all the indebtedness evidenced by the Note (the "Indebtedness") to be immediately due and payable.

8. Pursuant to the terms of the Note, FDIC is entitled to recover a reasonable attorney's fee.

9. As security for the indebtedness evidenced by the Note, Defendant Henderson Hills Shops, Inc. executed and delivered to the Bank a mortgage and security agreement (the "Mortgage"), and an assignment of rentals (the "Assignment of Rentals"), both dated August 1, 1982.

10. As additional security for the Indebtedness, Defendant C. A. Henderson executed and delivered to the Bank on August 1, 1982, a guaranty (the "Guaranty") of the Indebtedness, which was reaffirmed on August 1, 1985.

11. The Mortgage and the Assignment of Rentals grant to FDIC, in its corporate capacity, as successor-in-interest to Century Bank, a mortgage lien upon, and an assignment of leases and rents pertaining to, the following described real estate and all fixtures of the debtors installed or located thereon:

Beginning at a point North 89°59'35" West a distance of 709.89 feet, thence South 00°1'35" East a distance of 358.60 feet from the Northeast Corner of Section 2, Township 17 North, Range 11 East, Creek County, Oklahoma, thence South 00°1'35" East a distance of 68 feet, thence South 89°59'35" East a distance of 62.3 feet, thence South 00°1'35" East a distance of 82 feet, thence North 89°59'35" West a distance of 140 feet, thence North 00°1'35" West a distance of 150.00 feet, thence South 89°59'35" East a distance of 77.7 feet to point of beginning, containing 0.384 acres more or less.

Said property is referred to hereafter as the "Property". The mortgage tax due and owing on the Mortgage was paid in full to the Treasurer of Creek County. The Mortgage was recorded in the office of the County Clerk of Creek County on November 5, 1982, in Book 126, Page 1175. The Assignment of Rentals was recorded in the office of the County Clerk of Creek County on November 5, 1982, in Book 126 at Page 1157. A fixture financing statement (the "Fixture Filing") was recorded in the office of the County Clerk of Creek County in Book 115 at Page 2222, and re-recorded in Book 116 at Page 47.

12. The Mortgage, the Assignment of Rentals and the Fixture Filing secure the indebtedness evidenced by the Note, and by virtue

of the default of the Defendant Henderson Hills Shops, Inc. under the Note, FDIC is entitled to foreclose the Mortgage, the Assignment of Leases and the Assignment of Rentals.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff have and recover from Defendants Tillman M. Hershberger, Raymond Doyal Hoover, and Robert J. Nale judgment in rem, forclosing any and all right, title, and interest each of them may claim in and to the subject property.


IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that an Order of Sale shall issue to the Sheriff of Creek County, Oklahoma, commanding him to advertise and sell, according to law, all of the right, title, or interest of Defendants Tillman M. Hershberger, Raymond Doyal Hoover, and Robert J. Nale in and to the Property, and to apply the proceeds arising from the sale in accordance with the separate Judgment as to Defendants Henderson Hills Shops, Inc. and C. A. Henderson entered simultaneously this day.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that such sale shall be made pursuant to the laws of the State of Oklahoma concerning special execution, appraisal, notice of sale, return of sale, confirmation and notice of confirmation, including, without limitation Okla. Stat. tit. 12 §§759, 764, 765 and 766 (1991).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that from and after the date of sale of the Property under and by virtue of this judgment and decree, the Defendants Tillman M. Hershberger, Raymond Doyal Hoover, and Robert J. Nale and all persons claiming under them, since the filing of the Complaint herein, be, and they are forever barred and foreclosed of and from

any and every lien upon, right, title, interest, estate or equity of, in, or to the Property, or any part thereof.

FOR ALL OF WHICH, LET EXECUTION ISSUE.

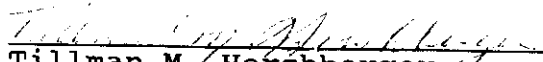

UNITED STATES DISTRICT JUDGE

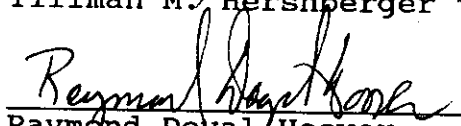
APPROVED:

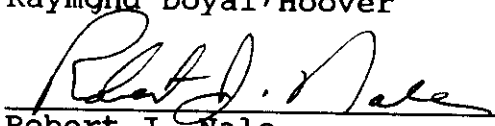
Bradley K. Beasley, OBA No. 628
R. David Whitaker, OBA No. 10520
Leslie Zieren, OBA No. 9999
of BOESCHE, McDERMOTT & ESKRIDGE
800 ONEOK Plaza
100 West Fifth Street
Tulsa, OK 74103
(918) 583-1777

ATTORNEYS FOR FEDERAL DEPOSIT
INSURANCE CORPORATION

APPROVED: Journal Entry of Judgment 89-C-144-E, U. S. Dist. Ct.
N. D. Oklahoma


Tillman M. Hershberger


Raymond Doyal Hoover


Robert J. Nale

January 21, 1992

PATRICIA D. HOWARD
CLERK OF THE PANEL

DOCKET NO. 875

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
IN RE ASBESTOS PRODUCTS LIABILITY LITIGATION (NO. VI)

(SEE ATTACHED SCHEDULE CTO-11)

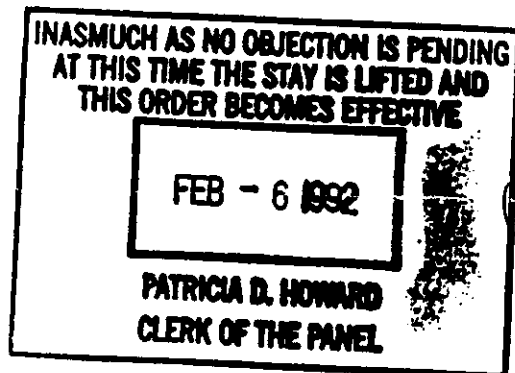
91-C-893-C ✓ **CONDITIONAL TRANSFER ORDER**

On July 29, 1991, the Panel transferred 27,880 civil actions to the United States District Court for the Eastern District of Pennsylvania for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. Since that time, more than 1,500 additional actions have been transferred to the Eastern District of Pennsylvania. With the consent of that court, all such actions have been assigned to the Honorable Charles R. Weiner.

It appears that the actions listed on the attached schedule involve questions of fact which are common to the actions previously transferred to the Eastern District of Pennsylvania and assigned to Judge Weiner.

Pursuant to Rule 12 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 120 F.R.D. 251, 258, the actions on the attached schedule are hereby transferred under 28 U.S.C. §1407 to the Eastern District of Pennsylvania for the reasons stated in the opinion and order of July 29, 1991, (771 F.Supp. 415), as corrected on October 1, 1991, October 18, 1991, November 22, 1991, and December 9, 1991, and, with the consent of that court, assigned to the Honorable Charles R. Weiner.

This order does not become effective until it is filed in the office of the Clerk of the United States District Court for the Eastern District of Pennsylvania. The transmittal of this order to said Clerk shall be stayed fifteen (15) days from the entry thereof and if any party files a notice of opposition with the Clerk of the Panel within this fifteen (15) day period, the stay will be continued until further order of the Panel.

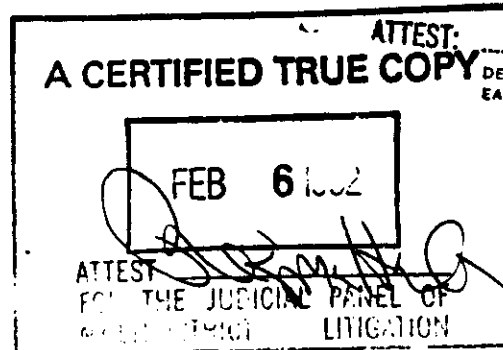


FOR THE PANEL:

Patricia D. Howard
Patricia D. Howard
Clerk of the Panel

A TRUE COPY CERTIFIED TO FROM THE RECORD

DATED: 2/11/92



Amey
DEPUTY CLERK, UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

JAN. 21, 1992

PATRICIA D. HOWARD
CLERK OF THE PANEL

SCHEDULE CTO-11 — TAG ALONG CASES
DOCKET NO. 875 — IN RE ASBESTOS PRODUCTS LIABILITY LITIGATION (NO. VI)

DISTRICT DIV CIVIL ACTION#

DISTRICT DIV CIVIL ACTION#

DISTRICT DIV CIVIL ACTION#

ALABAMA NORTHERN

AL.,N. 2 91-2985
AL.,N. 2 91-2998
AL.,N. 2 92-56

GEORGIA NORTHERN

GA.,N. 1 91-2832
GA.,N. 1 91-2983
GA.,N. 1 91-2984
GA.,N. 1 91-2985
GA.,N. 1 91-2986
GA.,N. 1 91-2987
GA.,N. 1 91-3071
GA.,N. 1 91-3096
GA.,N. 1 91-3097
GA.,N. 1 91-3098
GA.,N. 1 91-3099
GA.,N. 1 91-3125

GEORGIA SOUTHERN

GA.,S. 2 91-292
GA.,S. 2 91-293

ILLINOIS SOUTHERN

IL.,S. 4 91-4274
IL.,S. 4 91-4275
IL.,S. 4 91-4276
IL.,S. 4 91-4279

INDIANA SOUTHERN

IN.,S. 3 90-168
IN.,S. 3 90-172
IN.,S. 3 90-179
IN.,S. 3 90-188

KENTUCKY EASTERN

KY.,E. 6 90-279
KY.,E. 6 91-73

LOUISIANA WESTERN

LA.,W. 2 91-2676
~~LA.,W. 3 88-57~~

MARYLAND

MD. 1 91-3458
MD. 1 91-3468
MD. 1 91-3513
MD. 1 91-3515
MD. 1 91-3516
MD. 1 91-3517
MD. 1 91-3703

NORTH CAROLINA MIDDLE

NC.,M. 6 91-611

NEBRASKA

NE. 8 90-707
NE. 8 90-709
NE. 8 90-711
NE. 8 90-712
NE. 8 90-715
NE. 8 90-717

NEW JERSEY

NJ. 2 91-5257
NJ. 2 91-5355
NJ. 2 91-5356
NJ. 2 91-5366

NEW YORK NORTHERN

NY.,N. 1 91-1363
NY.,N. 1 91-1444

NEW YORK SOUTHERN

NY.,S. 1 91-5780
NY.,S. 1 91-6399
NY.,S. 1 91-8404
NY.,S. 1 91-8405

OKLAHOMA NORTHERN

OK.,N. 4 91-893

PENNSYLVANIA WESTERN

~~PA.,W. 2 91-1357~~ *closed*
~~PA.,W. 2 92-13~~ *closed*

SOUTH CAROLINA

SC. 2 91-3643
SC. 2 91-3644
SC. 2 91-3645
SC. 2 91-3652
SC. 2 91-3667
SC. 2 91-3668
SC. 2 91-3683
SC. 2 91-3684
SC. 2 91-3808

TENNESSEE EASTERN

TN.,E. 1 91-155
~~TN.,E. 2 91-83~~

TENNESSEE MIDDLE

~~TN.,M. 3 91-934~~ *closed*

TEXAS EASTERN

TX.,E. 1 86-152
TX.,E. 1 87-32
TX.,E. 1 87-509
TX.,E. 1 87-618
TX.,E. 1 87-744
TX.,E. 1 87-975
TX.,E. 1 87-1045
TX.,E. 1 87-1280
TX.,E. 1 87-1400
TX.,E. 1 87-1416
TX.,E. 1 88-219

TEXAS NORTHERN

TX.,N. 3 91-2528
TX.,N. 3 91-2529
TX.,N. 3 91-2530
TX.,N. 3 91-2718
TX.,N. 3 91-2719

UTAH

~~UT. 2 90-157~~

VIRGINIA EASTERN

VA.,E. 2 92-15

WASHINGTON WESTERN

WA.,W. 3 91-5522

WISCONSIN EASTERN

WI.,E. 2 91-1384

WEST VIRGINIA SOUTHERN

WV.,S. 3 91-1257

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF OKLAHOMA
4

5 MERILEE CHAMBERS, JAMES W.)
6 KNAPP, JR., RONALD LANGDON,)
7 ROBERT LORENZEN, WILLIAM MCLAIN,)
8 WILLIAM MILLER, DENNIS NICHOLS,)
9 OSWALDO OLIVEROS, RONALD POTTS,)
10 WYLIE REED, LESTER GREEN, CARL)
11 J. DOSS, LARRY D. FOLEY, MELVIN)
12 C. GREEN, JOSEPH R. HERNANDEZ,)
13 WALT R. SHILLING, VERNON B.)
14 BILLINGSLEY, JERRY E. HONEYCUTT,)
15 JUNIOR J. HURST, WILLIAM RAY)
16 TIPTON, RAYMOND L. ANDREWS,)
17 LEONARD A. BOSWELL, ROGER KENT)
18 JONES, JAMES A. KANE, HUGH JAMES)
19 LENAHAN, DAVID G. MILLER,)
20 CHARLES E. OSTERHOUT, GENE A.)
21 PARK, JAMES K. RUSHER, WILLIAM)
22 C. SIDES, TROY L. WILKERSON,)
23 BILLY L. EPPERSON, III, SAM)
24 RIDER, JR., CURTIS A. RAYON,)
25 ROGER L. ANDREWS, ALBERT D.)
26 CHANDLER, BUEL L. DEASON, MARK)
27 MARQUIS, JEAN RUST, DAVID JOICE,)
28 KENNETH JONES, on behalf of)
themselves and all other)
similarly situated, and FABSCO,)
Inc.,)

18 Plaintiffs,)

19 v.)

20 GEORGE R. BELTZ, THOMAS RINCON,)
21 DON AKERS, and STEVE MARTIN,)
22 Trustees of Diversified)
23 Industrial Group Health Plan,)
24 DIVERSIFIED INDUSTRIAL GROUP,)
25 DIVERSIFIED INDUSTRIAL GROUP)
26 HEALTH PLAN, DIVERSIFIED)
27 INDUSTRIAL GROUP TRUST, OAK TREE)
28 ADMINISTRATORS, INC., and)
INTERNATIONAL UNION OF PETROLEUM)
AND INDUSTRIAL WORKERS, AFL-)
CIO,)

26 Defendants.)
27
28

Case No.: 91 C 464 E

ORDER FOR DISMISSAL WITH
PREJUDICE

FEDERAL RULES OF CIVIL
PROCEDURE, RULE 41(a)(1)(ii)

FILED

FEB 6 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

1 IT IS HEREBY ORDERED pursuant to the stipulation of all
2 parties, that this action be, and hereby is, dismissed with
3 prejudice. Each party to bear his, her or its own costs and
4 attorneys fees except as otherwise agreed to by the parties in a
5 separate agreement.

6
7 IT IS SO ORDERED

8
9 DATED: 2/6/92

10 BY JAMES O. RUSON

11 Judge, United States District Court

12 order.dig
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE FEDERAL SAVINGS ASSOCIATION,)
by and through its Conservator,)
Resolution Trust Corporation, as)
successor in interest to certain)
assets of State Federal Savings)
and Loan Association,)

Plaintiff)

vs.)

JOHN G. ARNOLD, JR.; ARNOLD)
ENTERPRISES, INC., an Oklahoma)
corporation; DESIGN PROPERTIES,)
INC., an Oklahoma corporation;)
JOHN CANTRELL, Treasurer, Tulsa)
County, Oklahoma; BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma; SOONER FEDERAL SAVINGS)
ASSOCIATION, by and through its)
Receiver, Resolution Trust)
Corporation; FIRST GIBRALTAR)
BANK, F.S.B., SAN ANTONIO;)
STEVEN M. HARRIS; AND)
EVELYN M. HARRIS;)

Defendants.)

FILED
FEB 6 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 90-C-808-B

O R D E R

This matter comes before the Court on Defendants Harris' and Plaintiff's Motions for Summary Judgment. Plaintiff initiated this action seeking to recover on a promissory note owed Plaintiff by Defendant John G. Arnold, to foreclose a mortgage securing the debt, and reformation of the mortgage.

In the Pretrial Order the parties agreed that the following numbered facts are undisputed. The parties have further agreed to submit the matter to the Court for decision.

1. Plaintiff RTC is a national corporation organized and

existing under the laws of the United States of America, authorized to do business in the State of Oklahoma.

2. Defendant John G. Arnold, Jr. is a resident of Tulsa County, State of Oklahoma.

3. Defendant John G. Arnold, Jr. is the president of Defendant Arnold Enterprises, Inc., an Oklahoma corporation, and of Defendant Design Properties, Inc., an Oklahoma corporation.

4. Defendants Steven M. Harris and Evelyn M. Harris are husband and wife, residing at 7002 South Birmingham Court, Tulsa, Oklahoma.

5. Defendant First Gibraltar Bank, F.S.B., San Antonio, is the holder and owner of a mortgage interest in the Harris' 7002 South Birmingham Court property.

6. Lot 5, block 3, SHERRELWOOD, an addition to the City of Tulsa, was caused to be split into two lots in 1974 by Max Heidenreich, the vice president, of Premier Properties, Inc., the then owner of Lot 5.

7. The lot split resulted in the creation of two separate lots, one lying generally to the north of the lot split boundary (now the Arnold property to be foreclosed) and one lying generally to the south of the lot split boundary (now the Harris' property). The northern portion of Lot 5 was described on the Tulsa Metropolitan Area Planning Commission Lot Split as:

"Tract B:

Beginning at the northwest corner of said Lot 5; Thence easterly along the southerly line of 69th Street and around a curve to the left having a radius of 1107.96 feet for a

distance of 25.03 feet to a point of tangency; Thence easterly for a distance of 30.01 feet to a point of curvature; Thence around a curve to the right having a radius of 165 feet for a distance of 184.20 feet to a point of tangency; Thence continuing southeasterly along the southerly line of 69th Street and the northerly line of said Lot 5 for a distance of 59.74 feet; Thence S 74° 38'37" W for a distance of 265.42 feet to a point on the westerly line of said Lot 5; Thence N 5° 58'11" W along the westerly line of said Lot 5 for a distance of 202.59 feet to the northwest corner thereof and the Point of Beginning."

The southern portion of Lot 5 was described on the Tulsa Metropolitan Area Planning Commission Lot Split as:

"Tract A:

Beginning at the southwest corner of said Lot 5; Thence along the south line of said Lot 5, for a distance of 285 feet to the southeast corner thereof; Thence along the easterly line of said Lot 5 for a distance of 76.70 feet to the northeast corner thereof; Thence westerly along the southerly line of 69th Street and around a curve to the right having a radius of 115 feet for a distance of 69.88 feet to a point of tangency; Thence S 74° 38'37" W for a distance of 265.42 feet to a point on the westerly line of said Lot 5; Thence S 5° 58'11" E along the westerly line of said Lot 5 for a distance of 20 feet to the southwest corner thereof and the Point of Beginning."

8. All of the granting instruments as to both portions of Lot 5 since the lot split utilize these descriptions, which do not close.

9. The erroneous portion of the description involves the description of the lot split boundary line, although Plaintiff and Defendants Harris disagree as to what specific part of the description is in error.

10. The westerly line of Lot 5 runs at an angle of N 5

degrees 58'11" W or otherwise stated as S 5 degrees 58'11" E.

11. On or about August 29, 1974, Premier Properties, Inc., by general warranty deed, transferred title of the southern portion of Lot 5 to Max Heidenreich and his wife, Kathleen Heidenreich, in addition to Lot 7, Block 1, SOUTH OAKS, an addition to the City of Tulsa.

12. On or about March 25, 1985, the Heidenreichs transferred title, by general warranty deed, of the southern portion of Lot 5, along with Lot 7, Block 1, SOUTH OAKS, to Defendants Steven and Evelyn Harris, who now own this property, known as 7002 South Birmingham Court, Tulsa, Oklahoma.

13. On or about July 19, 1983, Defendant Design Properties, Inc., obtained title by general warranty deed to the north tract of Lot 5, and on or about January 22, 1986, Design Properties, Inc. transferred title by general warranty deed to John G. Arnold, Jr. and his wife, Margot R. Arnold.

14. On or about March 31, 1988, Margot R. Arnold quit claimed all of her right, title or interest in and to the north tract of Lot 5 to Defendant John G. Arnold, Jr.

15. On or about July 20, 1989, for good and valuable consideration, Defendant John G. Arnold, Jr. made, executed, and delivered unto State Federal Savings and Loan a certain promissory note in the original principal sum of \$64,000.00, plus interest accruing thereunder at the initial annual rate of 12.75%, and having a maturity date of January 16, 1990 ("Note").

16. As security for the repayment of the indebtedness

evidenced by the Note, Defendant John G. Arnold, Jr. made, executed, acknowledged according to law, and delivered to State Federal Savings and Loan a certain real estate mortgage dated July 20, 1989, (filed on July 21, 1989, in Book 5196, Page 874, in the office of the County Clerk of Tulsa County, Oklahoma, with all mortgage tax paid thereon), covering the north tract of Lot 5, block 3, SHERRELWOOD, an addition to the city of Tulsa, all as more particularly described in the copy of the Mortgage, incorporated herein by reference.

17. Defendant John G. Arnold, Jr. has failed to make payments according to the express terms of the Note, and is therefore in default.

18. Pursuant to the terms and conditions of the Note and the Sherrelwood Mortgage, RTC is entitled to recover all costs incurred by it in preserving and insuring the subject property, all taxes on the real property paid by RTC, and all costs of collection, including, without limitation, a reasonable attorney's fee and abstracting expenses, and the same shall be a further charge and lien on the subject property.

19. After allowing all just credits, as of July 17, 1990, there is due and owing to RTC under the terms of the Note by Defendant John Arnold, Jr. the unpaid principal balance of \$64,000.00, plus interest accrued through July 17, 1990, in the sum of \$7,595.12, with interest accruing from and after July 17, 1990, until paid in full at the rate of \$21.04 per diem, and a reasonable attorney fee, with interest on the above sums until paid, for which

amounts the Mortgage is a first, prior, and superior lien upon the subject property and premises.

20. As to any claim of right, title, or interest in and to the subject real property by Defendant Arnold Enterprises, Inc., said right, title or interest is junior and inferior to the right, title and interest of Plaintiff in and to the real property at issue and should be foreclosed.

21. As to any claim of right, title or interest in and to the subject real property by Defendant Design Properties, Inc., said right, title or interest is junior and inferior to the right, title and interest of Plaintiff in and to the real property at issue and should be foreclosed.

22. As to any claim of right, title or interest in and to the subject real property by Defendant John Cantrell, Treasurer, Tulsa County, Oklahoma and/or the board of County Commissioners, Tulsa County, Oklahoma, and Sooner Federal Savings Association, by and through its Receiver, Resolution Trust Corporation, said right, title or interest is junior and inferior to the right, title and interest of Plaintiff in and to the real property at issue and should be foreclosed.

23. As to any claim of right, title or interest in and to the subject real property by Defendant Steven M. Harris, Evelyn M. Harris, and First Gibraltar Bank, F.S.B., San Antonio, said right, title or interest in and to Defendant Arnold's Mortgaged property to be described by and after the Court's reformation of the boundary line description, is junior and inferior to the right,

title and interest of Plaintiff in and to the real property at issue and should be foreclosed.

24. On February 16, 1990, pursuant to Sec. 5(d)(2) of the Home Owners Loan Act of 1933 [as amended by Sec. 301 of The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (the "Act"), as enacted on August 9, 1989] the director of the Office of Thrift Supervision issued Order No. 90-357 and placed State Federal Savings and Loan Association ("State Federal") in Receivership and assumed exclusive custody and control of the property and affairs of it. The Director of the Office of Thrift Supervision, through Order No. 90-357, also appointed RTC as the Receiver of State Federal to have "all the powers of a conservator or receiver, as appropriate, granted under the Federal Deposit Insurance Act, and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators or receivers, as appropriate, of savings associations under this Act and any other provisions of law." The Director of the Office of Thrift Supervision subsequently issued Order No. 90-359, appointing RTC as the Conservator of State Federal Savings Association (the new, operating institution) to have "all the powers of a conservator or receiver, as appropriate, granted under Federal Deposit Insurance Act, and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators or receivers, as appropriate, of savings associations under this Act any other provisions of law."

25. Subsequently, certain assets of State Federal were sold

and transferred from RTC as the Receiver for it to State Federal Savings Association, by and through its Conservator, RTC. State Federal Savings Association, by and through its Conservator, RTC, purchased those certain assets that are involved in this action.

26. Subsequent to the institution of this lawsuit, on August 16, 1991, the Office of Thrift Supervision appointed the RTC as Receiver for State Federal Savings Association pursuant to OTS Order No. 91-497 and §5(d)(2)(F) of the Home Owners' Loan Act of 1933 [as amended by Section 301 of the ACT]. RTC accepted the appointment as Receiver for State Federal Savings Association and took possession of it on August 16, 1991. As a result State Federal Savings Association, by and through its Receiver, RTC, has succeeded to certain rights and interests of State Federal Savings Association, previously in Conservatorship, and is accordingly the proper party as a matter of law, as so substituted by the Court, and the holder and owner of the note and mortgage at issue.

27. A topographical survey of Lot 5 was performed for the purpose of preparing documents necessary to obtain approval of the split of the lot by B. G. Brummett of Plummer Brummett, an Oklahoma corporation, at the request of Max Heidenreich.

28. The topographical survey indicates an existing 10 foot wide sewer easement across Lot 5. Within the boundaries of the easement, the "Proposed Lot Split Line" is drawn.

29. Mr. Brummett understood Mr. Heidenreich intended to split Lot 5 along the sewer easement line to intersect the western boundary of Lot 5 approximately 20 feet north of the southwest

corner of Lot 5. Mr. Brummett further understood that one of the reasons for splitting the lot along the easement was to allow access to it by either newly-created lot.

30. Mr. Brummett incorrectly recorded his description of the lot split line on the lot split approval documents, including on the topographical survey.

31. Max Heidenreich never intended the lot to be split anywhere north of the sewer easement.

32. The portion of the north tract of Lot 5 as described in the mortgage contains what appears to be a scrivener's error as to the "1107.96 feet" portion of the description, which was typed as "11-7.96 feet". Said mortgage should be reformed to correct this error.

33. During Mr. Heidenreich's ownership of the south tract of Lot 5, he and Mr. Arnold never had a dispute as to the lot split boundary line, nor did Mr. Heidenreich ever exercise any ownership or possessory rights over any part of Lot 5 north of the sewer easement.

34. Since he obtained title to the south tract of Lot 5 in 1985, Mr. Harris, believing he owns it, has performed landscaping and maintenance work on a steep hillside on a portion of Lot 5, which includes a portion of the real property north of the sewer easement.

35. Mr. Arnold believes the lot split boundary to be along the sewer line within the 10 foot sewer easement. He has never acquiesced to the Harris' ownership, possession, or any claim of

possession of any property north of the sewer easement. He has allowed Mr. Harris to be on his property only to allow Mr. Harris to perform maintenance on part of the property. The fountain is still sitting over the sewer line, as Mr. Harris has not moved it.

36. Existing over most of the disputed boundary line is a natural pond, which creates riparian rights and littoral rights in the abutting property owners -- Harris' and Arnold.

37. Defendant Mrs. Harris has no idea where the lot split boundary line lies.

38. On March 2, 1983, Max A. Heidenreich and Kathleen H. Heidenreich executed a promissory note payable to Sooner Federal Savings and Loan Association in the principal amount of \$175,000 (the "Note").

39. Contemporaneous with execution of the Note, Max A. Heidenreich and Kathleen H. Heidenreich executed a mortgage (the "Mortgage"), pledging the following described real property as collateral for the Note:

Lot Seven (7), Block One (1), South Oaks, an Addition to the city of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

AND

A part of Lot Five (5), Block Three (3), Sherrelwood, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof; being more particularly described as follows, to-wit: BEGINNING at the southwest corner of said Lot 5; thence S 89° 38'29" East along the South line of said Lot 5, for a distance of 285 feet to the Southeast corner thereof; thence N 1° 24'43" East along the Easterly line of said Lot 5 for a distance of 76.70 feet to the

Northeast corner thereof; thence Westerly along the Southerly line of 69th Street and around a curve to the right having a radius of 115 feet for a distance of 69.88 feet to a point of tangency; thence S 74° 38'37" West for a distance of 265.42 feet to a point on the Westerly line of said Lot 5; thence S 5° 58'11" East along the Westerly line of said Lot 5 for a distance of 20 feet to the Southwest corner thereof and the Point of Beginning.

40. On March 29, 1985, Max A. Heidenreich and Kathleen M. Heidenreich conveyed the Subject Property by General Warranty Deed to the Harrises, using the description in the above paragraph.

41. On April 5, 1985, the Harrises executed a Substitution and Transfer agreement, thereby assuming the indebtedness evidenced by both the Note and the Mortgage and repledging the Subject Property as collateral for the Note.

42. First Gibraltar is now the holder and owner of the Note, Mortgage and Substitution and Transfer Agreement by virtue of its acquisition from the Resolution Trust Corporation as Receiver of Sooner Federal Savings Association (the "RTC").

43. First Gibraltar, as the holder of a mortgage, which encumbers the Harrises' property at 7002 S. Birmingham Court, Tulsa, Oklahoma, is entitled to reformation of its mortgage to the extent made necessary by and consistent with the Court's reformation of Plaintiff's mortgage.

44. John G. Arnold, Jr. is entitled to reformation of his deed to the extent made necessary by and consistent with the Court's reformation of Plaintiff's mortgage.

45. Defendants Harris are entitled to reformation of their

deed to the extent made necessary by and consistent with the Court's reformation of Plaintiff's mortgage.

In construing an instrument, the Court's task is to ascertain the intent of the parties. Cleary Petroleum Corp. v. Harrison, 621 P.2d 528, 532 (Okla 1980). Intention of the parties controls. Geb v. Wilkins, 399 P.2d 456 (Okla 1965).

If possible, intent is to be derived from the four corners of the instrument. Cleary, 621 P.2d at 532. However, when the intent is not clear from the instrument itself, creating an ambiguity or uncertainty in the conveyance, parol evidence as well as the instrument is admissible to show intent. Riedt V. Rock Island Improvement Co., 521 P.2d 79, 83 (Okla. 1974); Cronkhite v. Falkenstein, 352 P.2d 396 (Okla. 1960); Jennings v. Amerada Petroleum Corp., 66 P.2d 1069 (Okla. 1937); 15 O.S. §152.

A description in a deed which does not close creates ambiguity in a conveyance rendering parol evidence admissible to explain intent. Blalock v. Johnson, 121 So.2d 604, 609 (Ala. 1960); Hofer v. Carino, 72 A.2d 335 (N.J. 1950); Maxwell v. Maxwell, 123 P.2d 335 (Wash. 1942); Grimes v. Jordan, 260 S.W.2d 220, 223-24 (Tex. Ct. App. 1953); Cities Service Oil Co. v. Dunlap, 115 F.2d 720, 722 (5th Cir. 1940).

Moreover, when a description does not close, the fact that the parties did not intend the property to be described in the manner set forth, is apparent, and parol evidence is admissible on grounds of mutual mistake. Mathews v. Florida Crossbreeds, Inc., 330 So.2d 183, 186 (Fla. Dist. Ct. App. 1976).

The descriptions in the deeds should be reformed, as Plaintiff

avers, by eliminating the course and distance calls of the present boundary line separating Tracts A and B. The intent of Max Heidenreich to split Lot 5 along the sewer easement line to intersect the western boundary of Lot 5, 20 feet north of the southwest corner of Lot 5, is supported by clear and convincing evidence. Heidenreich Depo., Exh. G; Rupe Aff., Exh. E; Brummett Aff., Exh. F. Further, the record clearly indicates the distance call and bearing description of the lot split line were incorrectly recorded. Brummett Aff., Exh. F.

The reference to the endpoints of the boundary line in the deeds themselves indicate the intent of the parties. Contrary to the Defendant's argument, these specific references, capable of precise location, may be more reliable than course and distance calls. Wallace v. Hirsch, 350 P.2d 560 (Colo. 1960).

The Harrises, as subsequent grantees, are bound by the intent of the original lot splitting parties and any ordered reformation. Reformation may be had as against a party to an instrument and against another taking from him with notice. Clement Mortgage Co. v. Lewis, 253 P. 88 (Okla. 1927); Wise v. Latimer, 109 P.2d 1001 (Okla. 1948); Terrill v. Laney, 193 P.2d 296 (Okla. 1948). From the record, it is clear that Mr. Harris had notice of the intended split from a conversation he had with Mr. Heidenreich at the time of purchase. Heidenreich Depo, Exh. G.

The Court concludes the motion of Defendants Harris for Summary Judgment should be and the same is hereby DENIED. The Court further concludes the Plaintiff's Motion for Summary Judgment should be and the same is hereby SUSTAINED.

The Plaintiff's mortgage (Tract B) is reformed to read:

"Beginning at the northwest corner of said Lot 5; Thence easterly along the southerly line of 69th Street and around a curve to the left having a radius of 1107.96 feet for a distance of 25.03 feet to a point of tangency; Thence easterly for a distance of 30.01 feet to a point of curvature; Thence around a curve to the right having a radius of 165 feet for a distance of 184.20 feet to a point of tangency; Thence continuing southeasterly along the southerly line of 69th Street and the northerly line of said Lot 5 for a distance of 59.74 feet; Thence south to a point on the westerly line of said Lot 5; Thence N 5° 58'11" W along the westerly line of said Lot 5 for a distance of 202.59 feet to the northwest corner thereof and the Point of Beginning."

The deed to the Arnold's (Tract B) is reformed to read:

"Beginning at the northwest corner of said Lot 5; Thence easterly along the southerly line of 69th Street and around a curve to the left having a radius of 1107.96 feet for a distance of 25.03 feet to a point of tangency; Thence easterly for a distance of 30.01 feet to a point of curvature; Thence around a curve to the right having a radius of 165 feet for a distance of 184.20 feet to a point of tangency; Thence continuing southeasterly along the southerly line of 69th Street and the northerly line of said Lot 5 for a distance of 59.74 feet; Thence south to a point on the westerly line of said Lot 5; Thence N 5° 58'11" W along the westerly line of said Lot 5 for a distance of 202.59 feet to the northwest corner thereof and the Point of Beginning."

The Defendant, First Gibraltar Bank's mortgage (Tract A) is reformed to read:

"Beginning at the southwest corner of said Lot 5; Thence along the south line of said Lot 5, for a distance of 285 feet to the southeast corner thereof; Thence along the easterly line of said Lot 5 for a distance of 76.70 feet to the northeast corner thereof; Thence westerly along the southerly line of 69th Street and

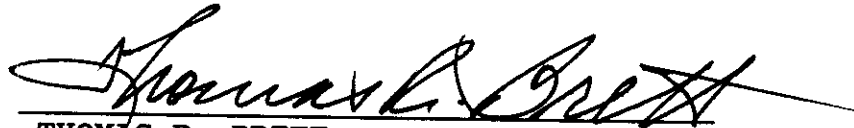
around a curve to the right having a radius of 115 feet for a distance of 69.88 feet to a point of tangency; Thence to a point on the westerly line of said Lot 5; Thence S 5° 58'11" E along the westerly line of said Lot 5 for a distance of 20 feet to the southwest corner thereof and the point of Beginning."

The deed to the Harrises (Tract A) is reformed to read:

"Beginning at the southwest corner of said Lot 5; Thence along the south line of said Lot 5, for a distance of 285 feet to the southeast corner thereof; Thence along the easterly line of said Lot 5 for a distance of 76.70 feet to the northeast corner thereof; Thence westerly along the southerly line of 69th Street and around a curve to the right having a radius of 115 feet for a distance of 69.88 feet to a point of tangency; Thence to a point on the westerly line of said Lot 5; Thence S 5° 58'11" E along the westerly line of said Lot 5 for a distance of 20 feet to the southwest corner thereof and the point of Beginning."

The parties are directed to submit to the Court an agreed judgment foreclosing Plaintiff's note and mortgage and reflecting the reformation of the deeds aforesaid.

IT IS SO ORDERED THIS 6th day of Feb ~~January~~, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB -6 1992

EDWARD H. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

MAIN MALL ENTERPRISES, INC. d/b/a)
MIDTOWN ADULT THEATRE AND
BOOKSTORE,

Plaintiff,

v.

CITY OF TULSA, ex.rel. DEPARTMENT
OF FINANCE,


Defendant.

No. 92-C-101-B

NOTICE OF DISMISSAL
WITHOUT PREJUDICE

COMES NOW the Plaintiff, Main Mall Enterprises, Inc. d/b/a Midtown Adult Theatre and Bookstore, and, pursuant to Rule 41 (a) (1) (i) of the Federal Rules of Civil Procedure, hereby dismisses this case without prejudice to the refiling of the same.

The Plaintiff would advise this Court that an agreement has been reached between the parties which vitiates the need for this present action. Furthermore, the Defendant has not filed an Answer in this matter.


MARK A. WARMAN, OBA NO. 12920
2211 E. Skelly Drive
Tulsa, Oklahoma 74105
(918) 745-6084

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Russell
0679
Rm. 8839

Ward Family Partnership,
Petitioner,

v.

United States of America
and Pauline Quintero,

Respondents.

Case No. 91-C-848-0 **FILED**


FEB 6 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

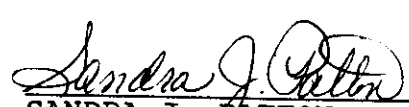
STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, the petitioner, Ward Family Partnership, and the respondents, United States of America and Pauline Quintero, stipulate to the dismissal with prejudice of the above-captioned Petition to Quash Summons. The petitioner agrees that the United States may obtain the documents requested in the third-party recordkeeper summons served on the Heritage Bank in Yale, Oklahoma on October 3, 1991.

The parties further agree that each party shall pay its own costs and attorneys fees.


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Trial Attorney
Tax Division
U.S. Department of Justice
Post Office Box 7238
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202-514-8220

Attorney for the United States
of America and Pauline Quintero


SANDRA J. PATTON
Tax Matters Partner
Ward Family Partnership
333 American Way
Jennings, OK 74038
918-757-2236

General Partner

5-59N-2188

9254633

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BILLY CHARLES CAIN,

Plaintiff,

v.

BOARD OF CORRECTIONS, et al,

Defendants.

91-C-529-E ✓

FILED

FEB 6 1992

ORDER


James O. Ellison, Clerk
U.S. District Court
Northern District of Oklahoma

The court has for consideration the Report and Recommendation of the Magistrate Judge filed January 8, 1992, in which the Magistrate Judge recommended that Defendants' Motion to Dismiss plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate Judge should be and hereby is affirmed.

It is therefore Ordered that Defendants' Motion to Dismiss plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 is granted.

Dated this 6th day of February, 1992.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

KLEIER ADVERTISING, INC., ET AL
Plaintiff(s),

vs.

No. 86-C-1015-C

PREMIER PONTIAC, ET AL
Defendant(s).

FILED

FEB 6 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 5 day of February, 1992.


UNITED STATES DISTRICT JUDGE

IN THE UNITED DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 6 1992

FEDERAL DEPOSIT INSURANCE CORPORATION,
in its corporate capacity,

Plaintiff,

vs.

HENDERSON HILLS SHOPS, INC.,
et al.,

Defendants.

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

No. 89-C-144-E

JUDGMENT

This cause coming on for hearing this 6th day of February, 1992, before the undersigned Judge, the parties appearing by and through their attorneys of record, and it appearing to the Court that this is a suit upon a promissory note, and for foreclosure of a mortgage upon real estate securing the same, which said real estate is located in the County of Creek, State of Oklahoma;

It further appearing to the Court that due and legal service was properly obtained by serving the defendants with summons herein more than 20 days prior to this date;

And it further appearing to the Court that the defendants Henderson Hills Shops, Inc., and C. A. Henderson (the "Defendants") have answered and admitted the allegations of the Complaint, the Court further finds and adjudges as follows:

1. On or about August 21, 1982, Defendant Henderson Hills Shops, Inc. executed a promissory note in the principal sum of \$320,000.00 in favor of Century Bank (the "Note").

2. As of the 30th day of August, 1991, the outstanding principal balance of the Note is \$233,333.75 and the accrued interest as of the same date is \$128,034.04. Interest continues to accrue thereon in accordance with the terms of the Mortgage at the rate of \$102.28 per diem.

3. FDIC, in its corporate capacity, is successor to all of the Bank's right, title and interest in the Note and all related security agreements and guaranties.

4. Although demand has been made upon the Defendant Henderson Hills Shops, Inc. by FDIC, Defendant Henderson Hills Shops, Inc. has failed to pay the indebtedness due pursuant to the Note, and is in default thereunder.

5. Pursuant to the terms of the Note, FDIC has previously declared and does again hereby declare all the indebtedness evidenced by the Note (the "Indebtedness") to be immediately due and payable.

6. Pursuant to the terms of the Note, FDIC is entitled to recover a reasonable attorney's fee.

7. As security for the indebtedness evidenced by the Note, Defendant Henderson Hills Shops, Inc. executed and delivered to the Bank a mortgage and security agreement (the "Mortgage"), and an assignment of rentals (the "Assignment of Rentals"), both dated August 1, 1982.

8. As additional security for the Indebtedness, Defendant

C. A. Henderson executed and delivered to the Bank on August 1, 1982, a guaranty (the "Guaranty") of the Indebtedness, which was reaffirmed on August 1, 1985.

9. The Mortgage and the Assignment of Rentals grant to FDIC, in its corporate capacity, as successor-in-interest to Century Bank, a mortgage lien upon, and an assignment of leases and rents pertaining to, the following described real estate and all fixtures of the debtors installed or located thereon:

Beginning at a point North 89°59'35" West a distance of 709.89 feet, thence South 00°1'35" East a distance of 358.60 feet from the Northeast Corner of Section 2, Township 17 North, Range 11 East, Creek County, Oklahoma, thence South 00°1'35" East a distance of 68 feet, thence South 89°59'35" East a distance of 62.3 feet, thence South 00°1'35" East a distance of 82 feet, thence North 89°59'35" West a distance of 140 feet, thence North 00°1'35" West a distance of 150.00 feet, thence South 89°59'35" East a distance of 77.7 feet to point of beginning, containing 0.384 acres more or less.

Said property is referred to hereafter as the "Property". The mortgage tax due and owing on the Mortgage was paid in full to the Treasurer of Creek County. The Mortgage was recorded in the office of the County Clerk of Creek County on November 5, 1982, in Book 126, Page 1175. The Assignment of Rentals was recorded in the office of the County Clerk of Creek County on November 5, 1982, in Book 126 at Page 1157. A fixture financing statement (the "Fixture Filing") was recorded in the office of the County Clerk of Creek County in Book 115 at Page 2222, and re-recorded in Book 116, page 47.

12. The Mortgage, the Assignment of Rentals and the Fixture Filing secure the indebtedness evidenced by the Note, and by virtue

of the default of the Defendant Henderson Hills Shops, Inc. under the Note, FDIC is entitled to foreclose the Mortgage, the Assignment of Leases and the Assignment of Rentals.

13. This Judgment does not resolve all of the claims in this case. The Court hereby determines that there is no just reason for delay for determination of the claims addressed by this Judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff have and recover from Defendant Henderson Hills Shops, Inc. the principal sum of \$233,333.75, together with accrued interest of \$128,034.04 as of August 30, 1991, interest accruing thereafter in the amount of \$102.28 per diem, a reasonable attorney's fee of \$10,000.00, and the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that an Order of Sale shall issue to the Sheriff of Creek County, Oklahoma, commanding him to advertise and sell, according to law, all of the Defendants' interest in the Property, and to apply the proceeds arising from the sale as follows:

A. In payment of the costs of said sale and of this action;

B. In payment of ad valorem taxes due, if any;

C. In payment of the principal sum of \$233,333.75 with accrued interest in the amount of \$128,034.04 as of August 30, 1991, with interest continuing to accrue thereafter in the amount of \$102.28 per diem, a reasonable attorney's fee in the amount of \$10,000.00, and the costs of this action; and,

D. That the residue, if any, be paid to the Clerk of this Court to await the further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that such sale shall be made pursuant to the laws of the State of Oklahoma concerning special execution, appraisal, notice of sale, return of sale, confirmation and notice of confirmation, including without limitation Okla. Stat. Tit. 12 §§759, 764, 765 and 766 (1991).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that if the amount derived from said sale is insufficient to satisfy the judgment granted the Plaintiff, including interest, attorney fees and costs, the Plaintiff shall have judgment against the Defendant Henderson Hills Shops, Inc. for the amount of such deficiency as permitted under Oklahoma law.


IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that from and after the date of sale of the Property under and by virtue of this judgment and decree, the Defendants and all persons claiming under them, since the filing of the Complaint herein, be, and they are forever barred and foreclosed of and from any and every lien upon, right, title, interest, estate or equity of, in, or to the Property, or any part thereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the issue of the liability of Defendant C. A. Henderson upon the Guaranty be and it hereby is reserved for determination by this Court at a later time.

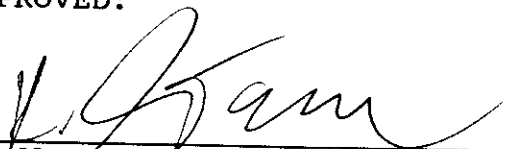
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that no just reason exists for delay of entry of this judgment, and the Clerk of

this Court is directed to enter judgment in accordance with the terms hereof.

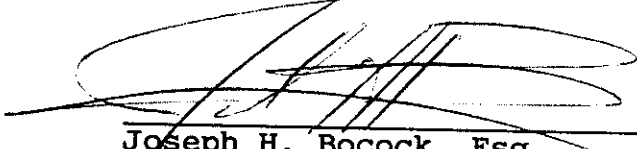
For all of which, let execution issue.


UNITED STATES DISTRICT JUDGE

APPROVED:


Bradley K. Beasley, OBA No. 628
R. David Whitaker, OBA No. 10520
of BOESCHE, McDERMOTT & ESKRIDGE
800 ONEOK Plaza
100 West Fifth Street
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(918) 583-1777

ATTORNEY FOR FEDERAL DEPOSIT
INSURANCE CORPORATION


Joseph H. Bocock, Esq.
Two Leadership Square
10th Floor
Oklahoma City, OK 73102

ATTORNEY FOR DEFENDANTS
HENDERSON HILLS SHOPS, INC.
AND C.A. HENDERSON

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILE

FEB 05 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DOBIE LANGENKAMP, et al.,

Plaintiffs,

vs.

No. 91-C-257-E /

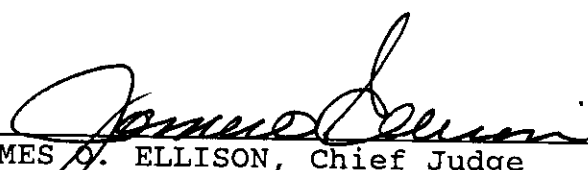
HERBERT LINDLEY a/k/a
R. H. LINDLEY, et al.,

Defendants.

ORDER

The Court has for consideration the Motion of R. H. Lindley for withdrawal of the reference. Under the teachings of Langenkamp v. Culp, 111 S.Ct. 330 (1990) and In re Latimer, 918 F.2d 136 (10th Cir. 1990) the Court must deny Mr. Lindley's Motion.

So ORDERED this 4TH day of February, 1992.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CLEO MASHUNKASHEY,

Plaintiff,

vs.

BOARD OF COUNTY COMMISSIONERS
OF OSAGE COUNTY, OKLAHOMA
and GAIL HEDGCOTH, individually
and in her official capacity as
Osage County Assessor,

Defendants.

BETTY MOORE,

Plaintiff,

vs.

BOARD OF COUNTY
COMMISSIONERS OF OSAGE
COUNTY, OKLAHOMA and
GAIL HEDGCOTH,
individually and in her
official capacity as Osage
County Assessor,

Defendants.

Case No. 91-C-618-B

FILED

FEB 05 1992

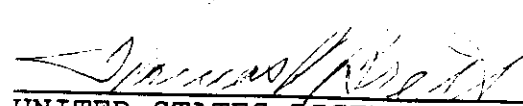
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 91-C-619-B

ORDER

NOW on this 5th day of Feb, 1992, this matter comes
on for hearing pursuant to the Joint Stipulation of Dismissal and
Application for Dismissal With Prejudice of the parties hereto.
The Court, being fully advised in these premises, finds that the
Application should be granted.

IT IS THEREFORE ORDERED that this cause is dismissed with
prejudice.


UNITED STATES DISTRICT JUDGE

13/10

entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

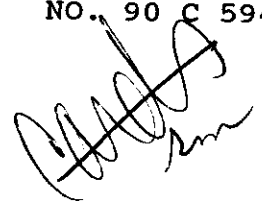
UNITED SIDING SUPPLY, INC.,)
)
 PLAINTIFF,)
)
 VS.)
)
 GRADY BROTHERS, INC., RANDY)
 GRADY, AND JACK HOKE,)
)
 DEFENDANTS.)

NO. 90 C 594 C

FILED

FEB 5 - 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT



JUDGMENT AWARDING ATTORNEYS FEES

NOW, on this 5th day of ~~September~~ *February*, 199*2*, the above-styled and numbered case comes on pursuant to Plaintiff's motion to assess attorney's fees. Plaintiff appears by and through its attorneys of record, Kivell, Rayment and Francis, by Brian J. Rayment. Defendants, Grady Brothers, Inc., and Jack Hoke, appear by and through their attorneys of record Schoepel and Curthoys, by Kevin A. Schoepel. Defendant, Randy Grady, appears by and through his attorneys of record, Richardson & Meier, by Ronald E. Hignight.

The Court, upon due consideration, finds that Plaintiff's motion should be granted.


IT IS THEREFORE ORDERED that Plaintiff, United Siding Supply, Inc., have and recover judgment against the defendants, Grady Brothers, Inc., Jack Hoke, and Randy Grady, and each of them, for attorneys fees in the amount of \$28,059.95.

IT IS SO ORDERED.

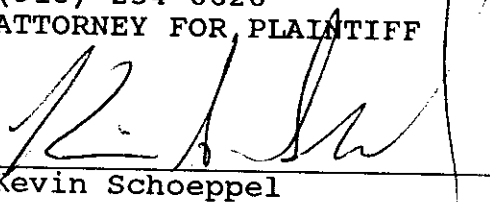
/S/ JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

UNITED STATES MAGISTRATE JUDGE

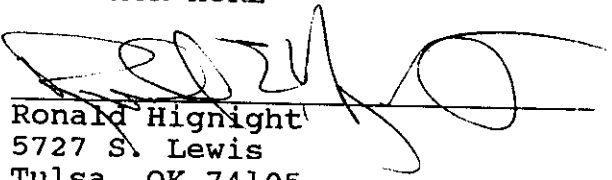
APPROVAL AS TO FORM:



Brian J. Rayment, OBA #7441
7666 East 61st, Suite 240
Tulsa, Oklahoma 74133
(918) 254-0626
ATTORNEY FOR PLAINTIFF



Kevin Schoepel
1408 S. Denver
Tulsa, OK 74119
918-582-5754
ATTORNEY FOR DEFENDANT, GRADY BROTHERS
AND JACK HOKE



Ronald Hignight
5727 S. Lewis
Tulsa, OK 74105
918-492-7674
ATTORNEY FOR DEFENDANT, RANDY GRADY

uss.att.bjr

FILED

FEB -5 1992

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

RICHARD H. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

BOOKER T. SHEPHARD,

Petitioner,

vs.

No. 90-C-42-C

RON CHAMPION, Warden;
ATTORNEY GENERAL, for the
State of Oklahoma,

Respondents.

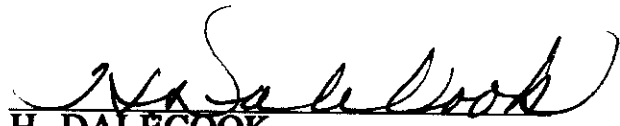
ORDER

Before the Court is the motion of petitioner for appointment of counsel to represent him on appeal. By Order of January 8, 1992, the Court denied petitioner's motion for federal habeas corpus relief. Petitioner timely filed his notice of appeal on January 27, 1992. Upon review, the Court does not believe that the issue to be appealed is so complex as to require appointed counsel. In any event, the request is better addressed to the appellate court. See Heath v. United States Parole Comm'n, 788 F.2d 85, 88 (2nd Cir.), cert. denied, 479 U.S. 953 (1986 ("[A]ppointment of counsel on an appeal involving a collateral attack on a conviction is a matter that rests within the discretion of the appeals court."))

24

It is the Order of the Court that the motion of the petitioner, Booker T. Shepard, for appointment of counsel is hereby denied.

IT IS SO ORDERED this 5th day of February, 1992.


H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 5 - 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

CHARLES A. ROBINSON,

PLAINTIFF,

V.

PRISCILLA ELLIS,


DEFENDANT.

CASE NO. 90-C-1029-B

JUDGMENT

In accordance with the jury verdict rendered February 3, 1992, Judgment is hereby entered in favor of Plaintiff, Charles A. Robinson and against the Defendant, Priscilla Ellis, in the amount of One Hundred Thousand Dollars (\$100,000.00), plus post-judgment interest at the rate of 4.02% per annum (28 U.S.C. § 1961) from February 3, 1992 on said principal sum. Each party is to pay his or her own respective attorney's fees. Costs are assessed against Defendant if timely applied for under Local Rule 6.

DATED this 5th day of February, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

26

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB -5 1992

RICHARD H. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

WALTER RAY HARVEY,
Plaintiff,
vs.
WILEY BACKWATER, et al.,
Defendants.

No. 90-C-1001-C ✓

ORDER

Before the Court is the motion of plaintiff for attorney fees. Plaintiff brought this action pursuant to 42 U.S.C. §1983 and received a jury verdict in his favor against defendant Dan Horne. Plaintiff now seeks fees pursuant to 42 U.S.C. §1988. The fees requested are as follows: lead attorney Earl Wolfe records 41 hours of non-court time and 45.5 hours of in-court time, all at a rate of \$200.00 per hour, for a total of \$17,300.00. Associate Charles L. Hamit records 55.9 hours of non-court time and 4.7 hours of in-court time, all at \$100.00 per hour, for a total of \$6,060.00. Thus, plaintiff's total request is \$23,360.00. In response, defendant only objects to Mr. Wolfe's hourly rate of \$200.00.

The Tenth Circuit has stated:

The first step in setting a rate of compensation for the hours reasonably expended is to determine what lawyers of comparable skill and experience practicing in the area in which the litigation occurs would charge for their time. If the lawyer seeking the fee is in private practice, his or her customary rate would be a relevant but not conclusive factor. The hourly rate should be based on the lawyers' skill and experience in civil rights or analogous litigation. Lawyers working outside their fields of expertise may deserve an hourly fee lower than their normal billing rate because of their lack of experience in the civil rights field. Salaried public interest firm lawyers should be assigned a billing rate

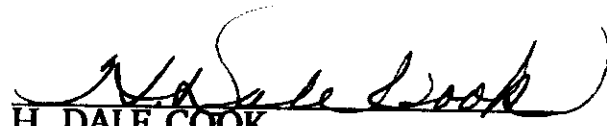
equal to their counterparts in expertise in private practice. The quality of the lawyer's performance in the case should also be considered in placing a value on his or her services.

Ramos v. Lamm, 713 F.2d 546, 555
(10th Cir. 1983) (footnotes omitted).

Neither party has presented any evidence as to local hourly rates in Tulsa. Mr. Wolfe has presented no evidence as to his "skill and experience" in civil rights litigation. From the Court's observation, Mr. Wolfe's conduct of the trial was more than competent. Upon review, the Court has determined to reduce Mr. Wolfe's hourly rate to \$150.00 for non-court time and \$175.00 for in-court time. The result is \$6,150.00 for non-court time and \$7,962.50 for in-court time. Mr. Wolfe's total request becomes \$14,112.50, and plaintiff's total request is \$20,172.50.

It is the Order of the Court that plaintiff's motion for attorney fees is hereby granted. Plaintiff is awarded fees in the amount of \$20,172.50.

IT IS SO ORDERED this 5th day of February, 1992.


H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

FEB 5 - 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

DAWN ROBINSON, A MINOR BY
JAMES ROBINSON, HER FATHER
AND NEXT FRIEND,

PLAINTIFF,

V.

DOMINO'S PIZZA, INC.,
A MICHIGAN CORPORATION,

DEFENDANT.

CASE NO. 91-C-112-B

AMENDED JUDGMENT

In accordance with the jury verdict rendered January 30, 1992, Judgment is hereby entered in favor of Plaintiff, Dawn Robinson, a minor, by her Guardian, Maura Pollock, and against the Defendant, Domino's Pizza, Inc., in the amount of Seventy Five Thousand Dollars (\$75,000.00), plus pre-judgment interest at the rate of 9.58% per annum (12 O.S. § 727) from the date of February 20, 1991, to January 31, 1992, and post-judgment interest at the rate of 4.02% per annum (28 U.S.C. § 1961) from January 31, 1992 on the total of said principal sum and pre-judgment interest. Costs are assessed against Defendant if timely applied for under Local Rule 6.

DATED this 5th day of February, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

PETER BERNHARDT, OBA # 741
Assistant United States Attorney
 3900 U.S. Courthouse
 Tulsa, Oklahoma 74103
 (918) 581-7463

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CLEO MASHUNKASHEY,

Plaintiff,

vs.

BOARD OF COUNTY COMMISSIONERS
OF OSAGE COUNTY, OKLAHOMA
and GAIL HEDGCOTH, individually
and in her official capacity as
Osage County Assessor,

Defendants.

BETTY MOORE,

Plaintiff,

vs.

BOARD OF COUNTY
COMMISSIONERS OF OSAGE
COUNTY, OKLAHOMA and
GAIL HEDGCOTH,
individually and in her
official capacity as Osage
County Assessor,

Defendants.

Case No. 91-C-618-B

FILED

FEB 07 1992

05
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 91-C-619-B

ORDER

NOW on this 5th day of Feb., 1992, this matter comes
on for hearing pursuant to the Joint Stipulation of Dismissal and
Application for Dismissal With Prejudice of the parties hereto.
The Court, being fully advised in these premises, finds that the
Application should be granted.

IT IS THEREFORE ORDERED that this cause is dismissed with
prejudice.

[Signature]
UNITED STATES DISTRICT JUDGE

12/10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA **F I L E D**

FEB 4- 1992

OKLAHOMA FIXTURE COMPANY,
an Oklahoma corporation,

Plaintiff,

v.

FIREMANS FUND INSURANCE COMPANY,
LUMBERMANS MUTUAL CASUALTY
COMPANY, UNITED STATES FIDELITY AND
GUARANTY COMPANY, FIRST SOUTHERN
INSURANCE COMPANY, formerly MORRISON
ASSURANCE COMPANY, UNITED STATES FIRE
INSURANCE COMPANY, ST. PAUL FIRE AND
MARINE INSURANCE COMPANY,

Defendants.

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

CASE NO. 91-C-668-E

DISMISSAL

COMES NOW the Plaintiff, Oklahoma Fixture Company, and hereby dismisses the above entitled action. This dismissal is with prejudice in respect of the claims of the Plaintiff against the Defendants for "Environmental Pollution" at the "Site" and this dismissal is without prejudice in respect of all other claims of the Plaintiff against the Defendants contemplated by this cause.

Respectfully submitted,

HOUSTON AND KLEIN, INC.

By: 

David F. James, OBA #4610
320 South Boston, Suite 700
Tulsa, Oklahoma 74103
(918) 583-2131

ATTORNEYS FOR PLAINTIFF,
OKLAHOMA FIXTURE COMPANY

CERTIFICATE OF SERVICE

This is to certify that on this 4th day of ~~January~~ ^{February}, 1992, a true and correct copy of the above and foregoing DISMISSAL was mailed, postage prepaid, to:

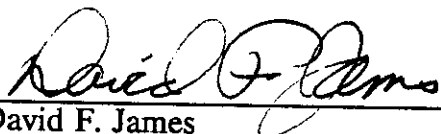
Judith Fournie Helms
TRESSLER, SODERSTROM, MALONEY & PRIESS
200 W. Adams Street, Suite 3000
Chicago, Illinois 60606

Phil R. Richards
John R. Paul
Gregg L. Graves
RICHARDS, PAUL, RICHARDS & SIEGEL
9 East 4th Street, Suite 400
Tulsa, Oklahoma 74103-5118

Robert N. Naifeh, Jr.
Kim Daniel Parrish
DERRYBERRY, QUIGLEY, PARRISH, SOLOMON & BLANKENSHIP
4800 North Lincoln Blvd.
Oklahoma City, Oklahoma 73105

Joseph F. Glass
Leigh Reaves
THOMAS, GLASS, ATKINSON, HASKINS, NELLIS & BOUDREAUX
525 South Main, Suite 1500
Tulsa, Oklahoma 74103

Randall A. Breshears
MONNET, HAYES, BULLIS, THOMPSON & EDWARDS
1719 First National Center West
Oklahoma City, Oklahoma 73102



David F. James

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE L. CHASTANG,

Defendant.

Civil Action No. 91-C-876-E

NOTICE OF DISMISSAL

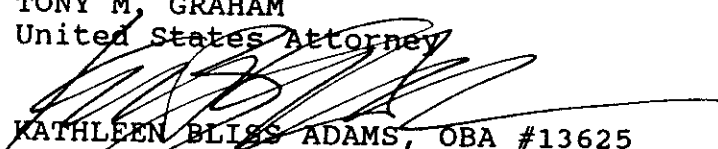
COMES NOW the United States of America by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Kathleen Bliss Adams, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice. This debt has been paid in full.

Dated this 4th day of February, 1992.

UNITED STATES OF AMERICA

TONY M. GRAHAM

United States Attorney


KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 4th day of February, 1992, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to Mr. George L. Chastang, 2410 W. Pine Place, Tulsa, Oklahoma 74127.


KATHLEEN BLISS ADAMS

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 04 1992

UNITED INDUSTRIES CORPORATION,)
)
Plaintiff,)
)
vs.)
)
TIM WATTS and GREGG HILKER,)
)
Defendants.)

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 91-C-978-B

CONSENT JUDGMENT AND PERMANENT INJUNCTION

This case came before this Court on a Verified Complaint of Plaintiff United Industries Corporation seeking Injunctive Relief and Damages against Defendants Tim Watts and Gregg Hilker. After the entry by this Court of a Temporary Restraining Order, this Court has been informed that the parties hereto consent to a judgment and permanent injunction (hereinafter "Judgment") as set forth herein. Thus, this Court makes and the parties stipulate to the following findings:

1. Plaintiff United Industries Corporation is a Delaware corporation with its principal place of business in St. Louis, Missouri.

2. Defendants Tim Watts and Gregg Hilker are citizens of the State of Oklahoma and reside in Tulsa, Oklahoma.

3. The amount in controversy in this matter exceeds \$50,000.00 and this Court has jurisdiction pursuant to 28 U.S.C. §1332.

4. Plaintiff United Industries Corporation operates three unincorporated divisions known as Tulsa Screw Products, DW Products, and Wej-It. These three unincorporated divisions

4

constitute the "Metal Companies." Tulsa Screw Products and DW Products manufacture screw machine products. Wej-it manufactures fasteners and anchor bolts.

5. RDS Products, Inc. is a Ft. Worth, Texas company which manufactures screw machine products.

6. The parties waive the requirements of further findings of fact or conclusions of law.

This Court, having considered the parties' consent to a judgment and permanent injunction, the pleadings and documents filed in connection with plaintiff's request for a temporary restraining order, and arguments of counsel in connection with that order, hereby Adjudges and Decrees, and the parties consent to this Judgment, as follows:

A. Defendants Tim Watts and Gregg Hilker, their officers, agents, servants, employees, and attorneys, and all persons in active concert with them or any of them, are hereby permanently enjoined from (a) purchasing all or any part of RDS Products, Inc.; and (b) disclosing or making use of confidential lawfully protected information concerning the Metal Companies or United Industries Corporation including said companies' methods of pricing, pricing strategy and structure, the identity of higher or lower margin accounts, standard costs, identity of customers, the identity of manufacturing tools used by the Metal Companies and United Industries Corporation, and any internal documents of the Metal Companies and United Industries Corporation.

B. Defendant Watts is further enjoined from performing any work for or on behalf of RDS Products, Inc., within one year from December 18, 1991, and Defendant Gregg Hilker is permanently enjoined from performing work for or on behalf of RDS Products, Inc. that is in any way violative of his prior Employment Agreement with the Plaintiff United Industries Corporation.

C. Judgment is entered for Plaintiff United Industries Corporation and jointly and severally against Defendants Tim Watts and Gregg Hilker in the amount of \$5,000.00 actual damages.

D. The cash bond for a temporary injunction deposited by Plaintiff United Industries Corporation in the amount of \$50,000.00 is to be returned immediately to plaintiff, plus interest, if any, which has accrued thereon.

E. Costs shall be assessed jointly and severally against Defendants Tim Watts and Gregg Hilker. Plaintiff United Industries Corporation shall not seek as costs its attorneys' fees incurred herein.

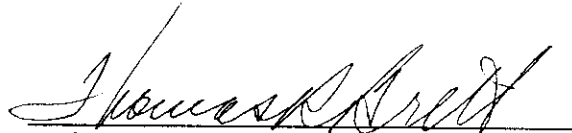
F. The defendants in agreeing to this Judgment acknowledge the jurisdiction of this Court to properly enter and enforce this Judgment. This Judgment shall be enforceable against any and all defendants in this lawsuit, all persons named herein, and any and all other persons, affiliated or acting in concert with those persons.

G. This Court retains jurisdiction to enforce this Judgment.

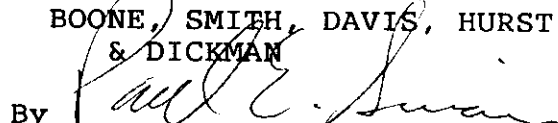
H. In the event that any part of this Judgment is violated by any of the named defendants or any other persons, the plaintiff may by Motion with notice to the attorney for the defendants apply for sanctions and such other relief as may be appropriate.

DATED:

Feb 4, 1992



United States District Judge
Thomas R. Brett

Agreed as to substance
and form

BOONE, SMITH, DAVIS, HURST
& DICKMAN
By 
Paul E. Swain
500 Oneok Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103-4204
(918) 587-0000

COBURN, CROFT & PUTZELL

Agreed as to substance
and form

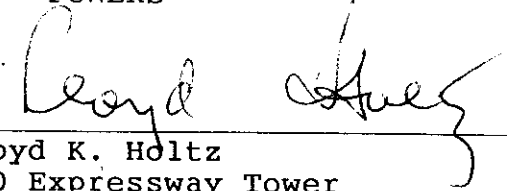
By 
J. William Newbold
One Mercantile Center
Suite 2900
St. Louis, MO 63101

Attorneys for Plaintiff
United Industries Corporation

WHITEBOOK, HOLTZ, GADDIS &
POWERS

Agreed as to substance
and form

By



Lloyd K. Holtz
200 Expressway Tower
2431 East 51st Street
Tulsa, OK 74105

Attorneys for Defendants
Tim Watts and Gregg Hilker

0683w

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 04 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JEFF R. HARPER

Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY,

Defendants.

No.: 91-C-555-B
(No. CJ-91-2931)
District Court of Tulsa
County, Oklahoma

ORDER OF
DISMISSAL WITH PREJUDICE

It appearing to the Court that the above-entitled action has been fully settled, adjusted, and compromised, and based on stipulation; therefore,

IT IS ORDERED AND ADJUDGED that the above-entitled action be, and it is hereby, dismissed, without cost to either party and with prejudice to the plaintiff.

Dated this 4th day of February 1992.

S. THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB -4 1992

TAMMY LYNN STARRITT, Personal)
Representative of the)
Estate of William Dan)
Starritt,)

Plaintiff,)

v.)

S.P.E., INC. and DORN)
ENTERPRISES, INC.)

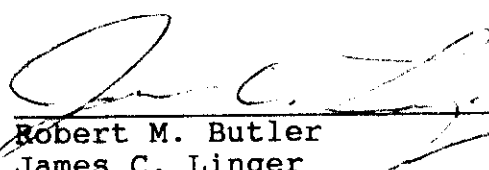
Defendants.)

Case No. 91-C-006-C

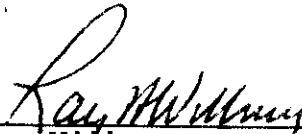
DAVID L. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

JOINT STIPULATION ^{OF} FOR DISMISSAL AS TO
DEFENDANT ERNST W. DORN CO., INC.

COME NOW the parties and hereby jointly stipulate for dismissal without prejudice of the defendant Ernst W. Dorn Co., Inc. and pursuant to Rule 41, Federal Rules of Civil Procedure. As evidenced by the signatures of counsel of record hereunder, all parties to the litigation have agreed and stipulated that the defendant Ernst W. Dorn Co., Inc. should be, and is hereby, dismissed without prejudice from this action.

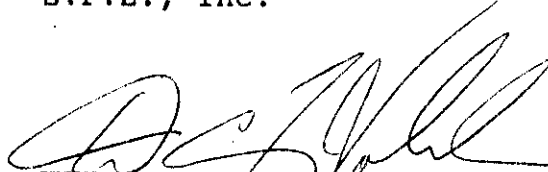

Robert M. Butler
James C. Linger
BUTLER & LINGER
1710 South Boston
Tulsa, OK 74119
(918) 585-2797

Attorneys for the Plaintiff,
Tammy Lynn Starritt



Ray Wilburn
David K. Robertson
WILBURN, MASTERSON & SMILING
2526-A East 71st St.
Tulsa, OK 74136-5548
(918) 494-0414

Attorneys for Defendant,
S.P.E., Inc.



David C. Johnston, Jr., OBA #4733
D. Craig Johnston, OBA # 11113
PIERCE COUCH HENDRICKSON
JOHNSTON & BAYSINGER
P.O. Box 26350
Oklahoma City, OK 73126
(405) 235-1611

Attorneys for Defendant,
Ernst W. Dorn Co., Inc.

FILED

FEB 04 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OKLAHOMA

IN RE:)	
)	
Wayne Darrell Zang,)	Case No. 82-00962-W
)	Chapter 7
Debtor,)	
)	
Ainslie Perrault, Successor Trustee)	
)	
Appellant,)	
v.)	
)	
Department of Energy,)	District Case No. 90-C 712B
)	
Appellee,)	

ORDER DISMISSING APPEAL

THIS matter comes on before me upon the Joint Application of the Appellant and the Appellee for dismissal of this Appeal. The Court having reviewed said Application and the file, FINDS:

That the above styled Appeal should be and hereby is dismissed with prejudice all in accordance with Rules of Bankruptcy Procedure 8001.

AND IT IS SO ORDERED

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

J. Scott McWilliams
1612 South Cincinnati
Tulsa, OK 74119
(918) 583-8197

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB -4 1992

LEAVELL RESOURCES CORP.,

Plaintiff,

vs.

PAYSAR OIL PROPERTIES, INC.,
ROBERT GORDON EQUIPMENT,
INC., ROBERT GORDON OIL CO.,
ELDON GORDON, an Individual,
DIXIE GORDON, an Individual,
ASSOCIATED NATURAL GAS, INC.,
and LINGAS CO.,


Defendants.

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 91-C-850-E

DISMISSAL

COMES NOW Defendant, Associated Natural Gas, Inc., and dismisses
its claim to recover attorney fees from the funds interpled into the Registry of the
Court in the above-styled matter.


R. BRENT BLACKSTOCK, OBA #839
BLACKSTOCK & BLACKSTOCK
5310 E. 31st St., Suite 520
Tulsa, Oklahoma 74135
(918) 622-3661
ATTORNEY FOR DEFENDANT
ASSOCIATED NATURAL GAS, INC.

CERTIFICATE OF MAILING

I, hereby certify that on this 3rd day of February, 1992, a true and correct copy of the above and foregoing **DISMISSAL** was mailed with proper postage fully prepaid thereon to the following:

H. Trattner, Esq.
Charles B. Davis, Esq.
Suite 165, 5555 N.W. Grand Boulevard
Oklahoma City, OK 73112
ATTORNEYS FOR PLAINTIFF

Carol J. Johnson
P. O. Box 5493
Denver, CO 80217

Patrick H. Kernan
4500 South Garnett, Suite 900
Tulsa, OK 74146



R. BRENT BLACKSTOCK

WP51\ANGILRC\DISMISS2

ORIGINAL
H

IN THE UNITED STATES DISTRICT COURT **F I L E D**
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB -4 1992 H

LEAVELL RESOURCES CORP.,)

Plaintiff,)

vs.)

PAYSAR OIL PROPERTIES, INC.,)

ROBERT GORDON EQUIPMENT,)

INC., ROBERT GORDON OIL CO.,)

ELDON GORDON, an Individual,)

DIXIE GORDON, an Individual,)

ASSOCIATED NATURAL GAS, INC.,)

and LINGAS CO.,)


Defendants.)


Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 91-C-850-E ✓

DISMISSAL

COME NOW Plaintiff, Leavell Resources Corp., and Defendant, Associated Natural Gas, Inc., and mutually dismiss all of the causes of action and counterclaims included in the within Complaint as to each other except for the claim of Defendant, Associated Natural Gas, Inc., to recover its attorney fees from the funds interpled into the Registry of the Court. Plaintiff will proceed with this action against Defendants, Paysar Oil Properties, Inc., Robert Gordon Equipment, Inc., Robert Gordon Oil Company, Eldon Gordon, an Individual, Dixie Gordon, an Individual, and Lingas Company, Defendants.


H. TRATTNER, OBA #9079
CHARLES B. DAVIS, OBA #2189
Suite 165, 5555 N.W. Grand Boulevard
Oklahoma City, OK 73112
(405) 947-6380
ATTORNEYS FOR PLAINTIFF
LEAVELL RESOURCES CORP.


R. BRENT BLACKSTOCK, OBA #839
BLACKSTOCK & BLACKSTOCK
5310 E. 31st St., Suite 520
Tulsa, Oklahoma 74135
(918) 622-3661
ATTORNEY FOR DEFENDANT
ASSOCIATED NATURAL GAS, INC.

CERTIFICATE OF MAILING

I, hereby certify that on this 3rd day of February, 1992,
a true and correct copy of the above and foregoing **DISMISSAL** was mailed with
proper postage fully prepaid thereon to the following:

Carol J. Johnson
P. O. Box 5493
Denver, CO 80217

Patrick H. Kernan
4500 South Garnett, Suite 900
Tulsa, OK 74146


H. TRATTNER

WP51\ANGILRC\DISMISS

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JULIA F. YOUNG; GILCREASE
HILLS HOMEOWNERS ASSOCIATION;
COUNTY TREASURER, Osage County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Osage County,
Oklahoma,

Defendants.

FILED

FEB 04 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 90-C-0014-B

DEFICIENCY JUDGMENT

This matter comes on for consideration this 4th day
of Feb., 1992, upon the Motion of the Plaintiff, United
States of America, acting on behalf of the Secretary of Veterans
Affairs, for leave to enter a Deficiency Judgment. The Plaintiff
appears by Tony M. Graham, United States Attorney for the
Northern District of Oklahoma, through Peter Bernhardt, Assistant
United States Attorney, and the Defendant, Julia F. Young,
appears neither in person nor by counsel.

The Court being fully advised and having examined the
court file finds that a copy of Plaintiff's Motion was mailed to
Steven W. Vincent, Attorney for Defendant Julia F. Young,
616 South Main, Suite 308, Tulsa, Oklahoma 74119, and all other
counsel and parties of record.

The Court further finds that the amount of the Judgment
rendered on May 22, 1991, in favor of the Plaintiff United States
of America, and against the Defendant, Julia F. Young, with
interest and costs to date of sale is \$95,005.71.

The Court further finds that the appraised value of the real property at the time of sale was \$66,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered May 22, 1991, for the sum of \$59,274.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 28th day of January, 1992.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendant, Julia F. Young, as follows:

Principal Balance as of 5/22/91	\$73,629.58
Interest	19,795.67
Late Charges to Date of Judgment	309.36
Appraisal by Agency	300.00
Management Broker Fees to Date of Sale	440.00
Abstracting	178.50
Publication Fees of Notice of Sale	127.60
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$95,005.71
Less Credit of Appraised Value	- <u>66,000.00</u>
DEFICIENCY	\$29,005.71

plus interest on said deficiency judgment at the legal rate of 4.02 percent per annum from date of deficiency judgment until

paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendant, Julia F. Young, a deficiency judgment in the amount of \$29,005.71, plus interest at the legal rate of 4.02 percent per annum on said deficiency judgment from date of judgment until paid.

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM

United States Attorney

PETER BERNHARDT, OBA #741

Assistant United States Attorney

3600 U.S. Courthouse

Tulsa, Oklahoma 74103

(918) 581-7463

PB/css

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 3 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CAPMAC, INC., an Oklahoma
corporation, formerly McKenzie
Management, Inc.,

Plaintiff,

vs.

NO. 91-C-345-B

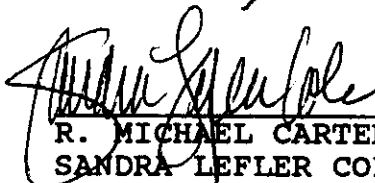
BURBANK HYDROCARBONS LIMITED,
a Nassau corporation, and
BEACH PETROLEUM NL,

Defendants.

STIPULATION OF DISMISSAL

Plaintiff CAPMAC, Inc., an Oklahoma corporation, formerly McKenzie Management, Inc., and Defendant Beach Petroleum NL hereby stipulate and agree to Plaintiff's dismissal of this action only insofar as Plaintiff's claims against Defendant Beach Petroleum NL are concerned, without prejudice for refileing of the same.

Dated this 27th day of JANUARY, 1992.



R. MICHAEL CARTER, OBA #1530
SANDRA LEFLER COLE, OBA #13309
5727 South Lewis
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Tulsa, OK 74105
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ATTORNEYS FOR PLAINTIFF CAPMAC, INC.

MILGRIM, THOMAJAN & LEE

By *Lawrence A Waks*

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ATTORNEYS FOR DEFENDANT BEACH
PETROLEUM NL

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 3 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

SCOTT O'DELL HINDS, an individual,)
)
Plaintiffs,)

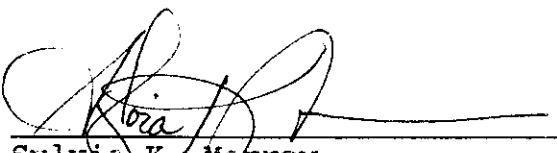
v.)


Case No. 91 C 915 B

PEACHTREE MEDICAL RENTALS, INC.,)
a Georgia Corporation; PEACHTREE)
PATIENT CENTER, INC., a Georgia)
Corporation; PEACHTREE TECH-)
NOLOGIES, INC., a Georgia Corp-)
oration; PEACHTREE PATIENT CENTER)
CORPORATION, a Georgia Corporation,)
INVACARE CORPORATION, an Ohio)
Corporation; WHEELCHAIR HOUSE,)
LTD., a Colorado Corporation; BILL)
TUTTLE, an individual; CRAIG)
HOSPITAL, a Colorado Corporation,)
)
Defendants.)

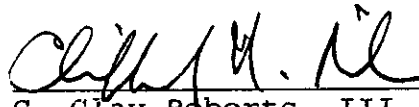
DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, Scott O'Dell Hinds, and hereby
Dismisses Without Prejudice, Defendant, Peachtree Medical Rentals,
Inc., a georgia corporation, pursuant to Federal Rules of Civil
Procedure rule 41(a)(1), reserving any and all causes of action
against all other Defendants included herein.


Sylvia K. Morrow
7000 Central Parkway, Suite 1654
Atlanta, Georgia 30328
(404) 393-0678
Attorney for Defendant


John R. Paul, OBA 76971
Ann C. Hinnant, OBA 13040
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Attorneys for Defendant

ROBERTS, MARRS & CARSON


C. Clay Roberts, III OBA 7632
Clifford N. Ribner OBA 7535
110 South Hartford, Suite 111
Tulsa, Oklahoma 74120
(918) 582-6567
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

This is to certify that on the 3rd day of February, 1992, a true and correct copy of the above and foregoing instrument was mailed with proper postage fully prepaid to:

C. Clay Roberts, III, Esq.
Clifford R. Ribner, Esq.
110 South Hartford, Suite 111
Tulsa, Oklahoma 74120

Sylvia Morrow, Esq.
7000 Central Parkway, Suite 1654
Atlanta, Georgia 30328

John McCormick, Esq.
900 Oneok Plaza
Tulsa, Oklahoma 74103

William D. Perrine, Esq.
Rhodes, Hieronymus, Jones, Tucker & Gable
2800 Fourth National Bank
Tulsa, OK 74103


Ann C. Hinnant

ANC:tdr
4343

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CALVIN F. L. MANN and
PATRICIA ANDERSON,

Plaintiff,

vs.

No. 90-C-913-E

BOB W. HIGHFILL, an individual,
BOB HIGHFILL d/b/a HIGHFILL
CORPORATION, and HIGH-FILL
CORP., an Oklahoma corporation,

Defendants,

vs.

JAMES T. F. ANDERSON,

Additional-Party Plaintiff,

and

FARMLAND INDUSTRIES, INC.,
a Kansas corporation,

Added Defendant.

FILED

1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This Court, having reviewed the Stipulation of Dismissal filed by the parties, finds that this case should be dismissed with prejudice to the refiling of same. Thus, it is

ORDERED that the First Amended and Supplemented Complaint, Second Amended Counterclaim and all claims for relief are dismissed with prejudice to the refiling of same.

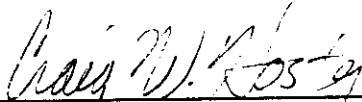
IT IS FURTHER ORDERED that the parties shall bear their respective costs, expenses and attorney fees.

IT IS SO ORDERED this ____ day of January, 1992.

S/ JAMES O. ELLISON

James O. Ellison
UNITED STATES DISTRICT JUDGE

APPROVED:



Craig W. Hoster, OBA #4384
Barbara J. Eden, OBA #014220
BAKER & HOSTER
800 Kennedy Building
Tulsa, Oklahoma 74103
(918) 592-5555

Attorneys for Plaintiffs
Calvin F. L. Mann and Patricia
Anderson and Additional-Party
Plaintiff James Anderson



Joel L. Wohlgemuth, OBA #9811
Thomas M. Ladner, OBA #5161
NORMAN & WOHLGEMUTH
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(918) 583-7571

Attorneys for Defendants,
Bob W. Highfill and
High-Fill Corp.

high.order7/crb

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LEWIS ROSS, JACKY STEALER,
LACY HAIR, JEFFREY CHUNESTUDY,
and THOMAS FEELING,

Plaintiffs,

vs.

TOWN OF SALINA and SALINA PUBLIC
WORKS AUTHORITY,

Defendants.

No. 90-C-679-B

FEB 3 1992

STIPULATION OF DISMISSAL WITH PREJUDICE

All parties stipulate that the above case can be dismissed,
with prejudice.

Nathan H. Young
Attorney for Plaintiffs
239 West Keetoowah
Tahlequah, Oklahoma

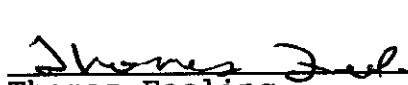
By


Lewis Ross


Jacky Stealer


Lacy Hair


Jeffrey Chunestudy


Thomas Feeling

John H. Lieber
ELLER AND DETRICH
Attorneys for Defendant
2727 E. 21st Street, Ste. 200
Midway Building
Tulsa, Oklahoma 74114

By

FILED

FEB 1992

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN RE:)	
)	
Beta Energy Corporation,)	Case No. 84-01337-W
)	Chapter 7
Debtor,)	
)	
Ainslie Perrault, Successor Trustee)	
)	
Appellant,)	
v.)	District Case No. 90-C 710 E
)	
Department of Energy,)	
)	
Appellee,)	

ORDER DISMISSING APPEAL

THIS matter comes on before me upon the Joint Application of the Appellant and the Appellee for dismissal of this Appeal. The Court having reviewed said Application and the file, FINDS:

That the above styled Appeal should be and hereby is dismissed with prejudice all in accordance with Rules of Bankruptcy Procedure 8001.

AND IT IS SO ORDERED Feb 3rd, 1992

RECEIVED FEB 19 1992

UNITED STATES DISTRICT JUDGE

J. Scott McWilliams
1612 South Cincinnati
Tulsa, OK 74119
(918) 583-8197

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
FEB 03 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

LEC CAPITAL CORPORATION,

Plaintiff,

vs.

CAMPBELL DRILLING COMPANY, INC.,
BOB E. WALLS, TRUMAN D. HOOVER,
BOB L. HAMILTON and BYTHEL
CAMPBELL,

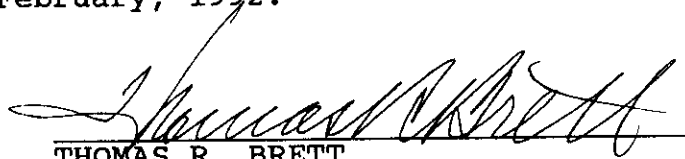
Defendants.

No. 89-C-1047-B

J U D G M E N T

In keeping with the Order entered this date sustaining the Motion for Summary Judgment of Plaintiff, LEC Capital Corporation, Judgment is hereby entered against the guarantor Defendant, Bob E. Walls, on his Guaranty of February 1, 1985 in the amount of \$236,470.56 in principal, plus interest in the sum of \$177,087.83 to the 3rd day of February, 1992. Interest accrues daily thereafter at the rate of \$136.05 a day computed on the basis of 21% per annum, as provided in the Note. Costs are hereby assessed against the Defendant, Bob E. Walls, as well as a reasonable attorney's fee if timely applied for pursuant to Local Rule 6.

DATED this 3rd day of February, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 14 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THEODORE CARR, an)	<u>Class Action</u>
individual, THOMAS C. GRINTER,)	
an individual, CLIFFORD HAYES,)	
an individual, and MITCHELL)	
R. KENT, an individual,)	
)	
Intervenor-Plaintiffs,)	
)	
CHARLES MCCORKLE, et al.,)	Civil Action
)	No. 86 C 979 E
Plaintiffs,)	
)	
vs.)	
)	
THE DOLESE COMPANY, et al.,)	
)	
Defendants.)	

JUDGMENT

On the 6th day of January, 1992, the above cause came on for trial before the Court and a jury, The Honorable James O. Ellison presiding, the plaintiff class being present by and through its class representatives and its attorneys, the defendant, The Dolese Company, being present by and through its representative and its attorneys, and the issues having been duly tried and the jury having returned its verdict by means of response to Special Interrogatories, as follows (copy of the Special Interrogatories is attached hereto as exhibit "A"):

1. Do you find that, during the relevant period, there was devised by anyone, willfully and knowingly, any artifice or scheme to defraud or to obtain money or property by false or fraudulent pretenses?

YES _____ NO X

Such special interrogatory and verdict having been duly signed by the foreperson and dated, was returned to open Court, and accepted by the Court on the 22nd day of January, 1992.

The Court, therefore, enters Judgment on the jury's verdict in favor of the defendant, The Dolese Company, and against the plaintiff class.

IT IS ORDER AND ADJUDGED that the Plaintiff take nothing, that the action be dismissed on the merits, and that the defendant, The Dolese Company, recover of the plaintiff class its costs of the action.

S/ JAMES O. ELLISON

The Honorable James O. Ellison
U. S. District Judge

Clerk of the Court

Approved as to form:

CHAPEL, RIGGS, ABNEY, NEAL
& TURPEN
M. David Riggs, OBA No. 7583
Fred Rahal, Jr., OBA No. 7378
Claire M. Trinidad, OBA No. 11428
502 West Sixth Street
Tulsa, Oklahoma 74119
(918) 587-3161

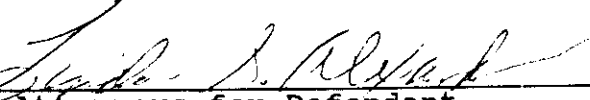
By M. David Riggs
Attorneys for the Plaintiffs

NIEMEYER, NOLAND & ALEXANDER
John C. Niemeyer, OBA No. 6683
Linda G. Alexander, OBA No. 195
Three Hundred North Walker
Oklahoma City, Oklahoma 73102
(405) 232-2725

and

Edward H. Moler, OBA No. 6298
2800 City Place
Oklahoma City, Oklahoma 73102
(405) 232-3566

By


Attorneys for Defendant,
The Dolese Company

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
IN OPEN COURT

JAN 22 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THEODORE A. CARR, an)
an individual, THOMAS C.)
GRINTER, an individual,)
CLIFFORD HAYES, an individual,)
and MITCHELL R. KENT, an)
individual,)

Intervenor-Plaintiffs,)

CHARLES MCCORKLE, et al.,)

Plaintiffs,)

vs.)

No. 86-C-979-E

THE DOLESE COMPANY,)
et al.,)

Defendants.)

SPECIAL INTERROGATORIES

1. Do you find that, during the relevant period, there was devised by anyone, willfully and knowingly, any artifice or scheme to defraud or to obtain money or property by false or fraudulent pretenses?

YES _____

NO X

If your answer to question number 1 is "no", you have completed your verdict, for the defendant Dolese, and your foreperson may sign and date the verdict form.

If your answer to question number 1 is "yes", you should answer the following questions:

2. Do you find that, during the relevant period, Dolese willfully and knowingly devised or participated in any scheme or artifice to defraud or to obtain money or property by false or fraudulent pretenses?

YES _____

NO _____

If your answer to question number 2 is "no", you have completed your verdict in favor of the defendant, and your foreperson may sign and date the verdict form.

If your answer to question number 2 is "yes", you should answer the following questions:

3. Were the United States mails used in furtherance of the "scheme to defraud", or for obtaining money under false or fraudulent ~~premises~~ *pretenses* which is referenced in questions numbered 1 or 2 above?

YES _____ NO _____

Were the interstate wires used in furtherance of the "scheme to defraud" or for obtaining money under false or fraudulent pretenses referenced in questions numbered 1 or 2 above?

YES _____ NO _____

If your answer to both of the above questions is "no", you have completed your verdict, and your foreperson may sign and date the verdict form.

If your answer to either of the above questions is "yes", please answer the following questions:

4. Did Dolese's conduct in violation of the mail and/or wire fraud statutes constitute a pattern of racketeering activity, as that term has been defined for you in these instructions?

YES _____ NO _____

If your answer to question number 4 is no, please go to question number 8.

If your answer to question number 4 is yes, please answer the following questions:

5. Did Dolese derive income from the violation of the mail and/or wire fraud statutes referenced above?

YES _____ NO _____

If your answer to question number 5 is "no", go to question number 8. If your answer to question numbered 5 is "yes", please answer the following question.

6. Did Dolese invest that income to acquire an interest in, or to establish or operate an enterprise, as that term has been defined in these instructions?

YES _____ NO _____

If your answer to question number 6 is "no", go to question number 8.

If your answer to question number 6 is "yes", please answer the following question:

7. Do you find that the enterprise referred to in question numbered 6 engaged in or its activities affected interstate commerce?

YES _____ NO _____

After answering this question, please go to the next question.

8. Do you find that Dolese joined together with any other person or persons to form an "association - in - fact" enterprise, as that term has been defined for you in these instructions?

YES _____ NO _____

If your answer to question number 8 is "no", you have completed your verdict, and your foreperson may sign and date the verdict form.

If your answer to question number 8 is "yes", please answer the following questions:

9. Did the activities of the association in fact enterprise, referred to in question number 8 affect interstate commerce?

YES _____ NO _____

If your answer to question number 9 is "no", you have completed your verdict, and your foreperson may sign and date the verdict form.

If your answer to question number 9 is "yes", please answer the following questions:

10. Did Dolese conduct, or participate in the conduct of the affairs of the association in fact enterprise referred to in question numbered 8 through a pattern of racketeering activities, as that term has been defined in these instructions?

YES _____ NO _____

1 - 22 - 92

DATE

Burt H. Murphy
FOREPERSON

United States District Court) 55
Northern District of Alabama)

I hereby certify that the foregoing
is a true copy of the verdict rendered
in this Court.

Richard M. Lawrence, Clerk

By C. Smith
Deputy

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB 03 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

LEC CAPITAL CORPORATION,

Plaintiff,

vs.

CAMPBELL DRILLING COMPANY, INC.,
BOB E. WALLS, TRUMAN D. HOOVER,
BOB L. HAMILTON and BYTHEL
CAMPBELL,

Defendants.

No. 89-C-1047-B

ORDER

The Court has for decision the Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56 of the Plaintiff, LEC Capital Corporation ("LEC"), against the Defendant, Bob E. Walls ("Walls").¹ The record reveals the following undisputed material facts:

1. On February 1, 1985, Defendant Bob E. Walls executed and delivered to the Citizens Bank of Drumright, Oklahoma (the "Bank"), a written guaranty of the debts of Campbell Drilling Company, Inc. ("Campbell Drilling"), which by its terms guaranteed payment to the Bank of "all obligations due from said borrower of every kind and character, now due or which may hereafter become due from said borrower to you, however created, arising or evidenced, and also of

¹The Court previously concluded by its Order of May 29, 1991 that since discovery had not been completed, and an issue of fact remained on the balance due, summary judgment was premature. The record now establishes that Plaintiff's Motion for Summary Judgment of January 10, 1992 is at issue and ripe for decision. Defendant, Walls, has advised the Court that he relies on his prior submissions as a response to Plaintiff's renewed Motion for Summary Judgment of January 10, 1992.

any and all renewals or extensions of any of the foregoing."
(Plaintiff's Exhibit 1).

2. On February 1, 1985, Bythel Campbell, President of Campbell Drilling, executed and delivered to the Bank Promissory Note No. 14696 in the amount of \$300,050.00. (Plaintiff's Exhibit 2).

3. On October 24, 1985, Defendant Campbell Drilling executed and delivered to the Bank Promissory Note Number 15677 (the "Note") in the original principal amount of Two Hundred Fifty-Seven Thousand Seventy-Three and 82/100 Dollars (\$257,073.82), together with interest payable thereon at the rate of fifteen percent (15%) per annum, with an additional 6% upon default. The Note was signed by Bythel Campbell, President of Campbell Drilling, and states that it is a "renewal" of Note Number 14696. (Plaintiff's Exhibit 3).

4. On January 6, 1986, March 3, 1986, September 16, 1986, December 30, 1986, and April 21, 1987, the Bank sent letters to Bob E. Walls, demanding payment of the Note. (Attached as Exhibits to Affidavit of D. Mike Moody - Plaintiff's Exhibit 4).

5. Prior to September 24, 1987, the Bank was a banking corporation organized under the laws of the State of Oklahoma with its principal place of business in Drumright, Oklahoma. At the close of business on September 24, 1987, the Oklahoma State Banking Commissioner assumed exclusive custody and control of the property and affairs of the Bank pursuant to 6 O.S. § 1202(b). (Affidavit of Cheryl Mosier - Plaintiff's Exhibit 5).

6. The Oklahoma Banking Commissioner subsequently tendered

to the FDIC appointment as liquidating agent of the Bank pursuant to 6 O.S. § 1205(b). The FDIC as liquidating agent sold certain assets of the Bank to the FDIC in its corporate capacity, including Promissory Note Number 15677 and the Walls Guaranty. (Mosier Affidavit - Plaintiff's Exhibit 5).

7. On January 11, 1991, LEC purchased the Note and the Guaranty from the FDIC. (Moody Affidavit - Plaintiff's Exhibit 4; Mosier Affidavit - Plaintiff's Exhibit 5).

8. On April 1, 1991, LEC was substituted as Plaintiff in this action for the FDIC by court order.

9. The subject Note is in default and although due demand for payment has been made upon guarantor Walls, he has failed and refused and continues to refuse to pay the debt. (Moody Affidavit - Plaintiff's Exhibit 4).

10. As of May 25, 1991, the principal amount due on the Note was Two Hundred Thirty-Six Thousand Four Hundred Seventy and 56/100 Dollars (\$236,470.56), together with interest due in the amount of One Hundred and Forty-Two Thousand Five Hundred Thirty and 74/100 Dollars (\$142,530.74), plus interest accruing at the rate of 21% per annum, attorney's fees, and the costs of this action. (Plaintiff's Exhibit 1 and 2; Moody Affidavit - Plaintiff's Exhibit 4).

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v.

Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Windon Third Oil & Gas v. FDIC, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

"The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

In defense Walls asserts that the Court is without jurisdiction, that Walls had an oral agreement with the Bank (The Citizens Bank of Drumright, Oklahoma) that his liability on the Guaranty would be limited to 25% of the Campbell Drilling debt, that the purported Promissory Note is not a valid legal obligation of Campbell Drilling Company, Inc., that the Walls Guaranty is not contemporaneous with the debt, and that there was no consideration for Walls' Guaranty.

The Court has jurisdiction over the subject matter and the parties herein because when the action was commenced by FDIC - Corporate the Court had jurisdiction pursuant to 12 U.S.C. § 1819, the FDIC having been appointed an agent of the United States for the purposes of 28 U.S.C. § 1345. The purchase of the Note and Guaranty by LEC and its substitution as party plaintiff in this

action does not defeat the Court's jurisdiction. Defendant Walls concurs that the Court had jurisdiction when the FDIC commenced the action. Therefore, the subsequent assignment to and substitution of LEC will not divest the court of jurisdiction. Jones v. Village of Proctorville, Ohio, 303 F.2d 311 (6th Cir. 1962); Freeport - McMoRan, Inc. v. K N Energy, Inc., ____ U.S. ____, 111 S.Ct. 858, 112 L.Ed.2d 951 (1991); J. W. Moore, Federal Practice, §25.08; Fred Harvey, Inc. v. Mooney, 526 F.2d 608 (7th Cir. 1975); Hood v. Bell, 84 F.2d 136 (4th Cir. 1936); Akzona, Inc. v. E. I. du Pont de Nemours & Co., 662 F.Supp. 603 (D.Del. 1987).

It is well established that when the FDIC acquires a note in its corporate capacity, the obligor of the note cannot defend on the basis of an oral agreement of the type asserted by Walls herein. D'Oench, Duhme & Co., Inc. v. Federal Deposit Ins. Corp., 315 U.S. 447, 459-62, 62 S.Ct. 67, 86 L.Ed. 956 (1942), and codified at 12 U.S.C. § 1823(e).

12 U.S.C. § 1823(e) provides as follows:

"No agreement which tends to diminish or defeat the right, title or interest of the [FDIC] in any asset acquired by it under this section, either as security for a loan or by purchase, shall be valid against the [FDIC] unless such agreement -

(1) shall be in writing,

(2) shall have been executed by the bank and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the bank,

(3) shall have been approved by the board of directors of the bank or its loan committee, which approval shall be

reflected in the minutes of said board or committee, and

(4) shall have been, continuously, from the time of its execution, an official record of the bank."

One of the purposes of § 1823(e) is to facilitate the purchase and assumption of failed banks rather than their liquidation. Federal Deposit Ins. Corp. v. Newhart, 892 F.2d 47 (8th Cir. 1989); *see also*, Federal Deposit Ins. Corp. v. Wood, 758 F.2d 156, 159 (6th Cir.), *cert. denied*, 474 U.S. 944, 106 S.Ct. 308, 88 L.Ed.2d 286 (1985), and Gunter v. Hutcheson, 674 F.2d 862, 865 (11th Cir.), *cert. denied*, 459 U.S. 826, 103 S.Ct. 60, 74 L.Ed.2d 63 (1982). Thus, under the above authority, the guarantor of a note appearing on its face to be a binding and regular obligation is estopped from asserting against the FDIC that the parties orally agreed the guaranty would not be enforced, or from asserting a failure of consideration.

The Court concludes the same protection extends to those who purchase assets from the FDIC in its corporate capacity. When the FDIC obtains the assets of the failed bank by way of purchase and assumption, it acquires the protection of the D'Oench Duhme doctrine and 12 U.S.C. § 1823(e). If the FDIC then sells or transfers the asset, the subsequent owner is entitled to the same protection that the FDIC had, under the D'Oench Duhme doctrine, 12 U.S.C. § 1823(e) and the holder in due course status. Federal Deposit Ins. Corp. v. Newhart, 892 F.2d 47, 49 (8th Cir. 1989); Bell & Murphy and Assoc., Inc. v. Interfirst Bank Gateway, N.A., 894 F.2d 750 (5th Cir. 1990); Porrás v. Petroplex Savings Ass'n.,

903 F.2d 379 (5th Cir. 1990). Thus, LEC stands in the shoes of the FDIC - Corporate, from whom it purchased the subject Note and Guaranty, and is entitled to the same protection. LEC is protected from the defenses of a secret oral agreement and a failure of consideration that Walls is asserting.

Walls asserts that such defenses were of record on January 17, 1990, when LEC bought the Note, so LEC was on notice thereof. However, the authorities are clear that in order to facilitate the proper functioning of the FDIC, LEC is permitted to stand in the shoes of the FDIC as a holder in due course.

Walls urges that since he signed the Guaranty of the Campbell Drilling debt on February 1, 1985 (Plaintiff's Exhibit 1), and the Promissory Note sued upon was not created until October 24, 1985 (Plaintiff's Exhibit 3), there is no liability under his Guaranty.

The undisputed evidence reflects that a contemporaneous Note in the amount of Three Hundred Thousand Fifty and No/100 Dollars (\$300,050.00) was executed on February 1, 1985 (Plaintiff's Exhibit 2), and the October 24, 1985 Promissory Note was a renewal of the February 1, 1985 Note. (Plaintiff's Exhibit 3). The terms of Walls' Guaranty expressly include renewals with the following language:

"The undersigned hereby requests you to give, and continue to give, Campbell Drilling Co., Inc. (hereinafter styled the "borrower"), from time to time as you may see fit, financial accommodations and credit, and, in consideration thereof, whether the same has been heretofore given or may hereafter be given by you to said borrower, the undersigned hereby guarantee and promise and agree to make prompt payment to you, as they severally

mature ... of all loans made, of which may be made, by you to said borrower ... and of any and all obligations, of every kind and character now due or which may thereafter become due from said borrower to you ...

"When any of the Liabilities shall become and remain due and unpaid, the undersigned will, upon demand, pay the amount due thereon."

Walls' reliance on Okla. Stat. tit. 15, § 323 is misplaced. In Ford Motor Credit Co. v. Milburn, 615 F.2d 892 (10th Cir. 1980), the court stated:

"The record shows an extension of future credit in consideration of a promise of guaranty. It is settled law in Oklahoma that extension of future credit to the principal debtor in reliance upon a guaranty is sufficient consideration for the contract of guaranty concerning both past and future obligations, even though the benefit to the debtor constitutes the whole consideration. [citations omitted]." *Id.* at 898.

In Penner v. International Harvester Co. of America, 171 Okla. 41, 41 P.2d 843, 844 (1935), the court stated:

"It is not necessary that the benefit of the consideration accrue to the promisor. [citations omitted]. The consideration may be sufficient, although the entire benefit accrues to the debtor. In this case, the extension of future credit to the principal debtor in reliance upon the guaranty, as was shown by the evidence, was sufficient as against the objection that the guaranty was without a valuable consideration"

Walls' Guaranty herein was executed simultaneous with a Promissory Note of Campbell Drilling dated February 1, 1985 (Plaintiff's Exhibits 1 and 2). In Walls' Guaranty he provided for prompt and full payment of future transactions of Campbell

Drilling. The Promissory Note of October 24, 1986 executed for and on behalf of Campbell Drilling Company, Inc. in the amount of \$257,073.82 (Plaintiff's Exhibit 3) was a renewal of the previous Note (Plaintiff's Exhibit 2) and was just such future credit extension as contemplated in the Guaranty.

Further, Walls asserts that the Promissory Note obligation he guaranteed is not enforceable because it has no corporate seal and no attesting signature of the Campbell Drilling Company, Inc. secretary. Walls does not provide any legal authority setting forth that such items are required to render a corporate Promissory Note enforceable. The Court is aware of no such authority under Oklahoma law. By the terms of the Guaranty Walls agreed to pay all loans made by Campbell Drilling Company, Inc. "however created, arising or evidenced, and also of any and all renewals or extensions . . ." Walls cites the case of Oklahoma City General Hospital v. Weathers, 147 Okla. 25, 294 P. 98 (Okla. 1930), which states ". . . the authority of an officer or an agent of a corporation need not necessarily be expressed but it may be implied from the circumstances. . . "

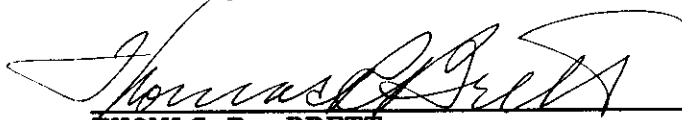
The record herein reveals that Walls was aware of the note and his Guaranty, and never asserted an objection regarding the authority of Bythel Campbell to sign either Plaintiff's Exhibit 2 or Plaintiff's Exhibit 3 as President of Campbell Drilling Company, Inc. The record reveals that commencing in January 1986 the Bank sent numerous letters to Walls demanding payment of the debt pursuant to his Guaranty. (Attachment to Affidavits of D. Mike

Moody - Plaintiff's Exhibit 4). There is no evidence in the record that Walls, previous to the commencement of this action, ever questioned the authority of Bythel Campbell to borrow the money and sign the Notes on behalf of Campbell Drilling Company, Inc.

Lastly, the record reveals that the current balance on the subject Note (Plaintiff's Exhibit 3) as of February 3, 1992, is \$236,470.56 principal and \$177,087.83 in interest, for a total payoff balance of \$413,558.39 (Exhibits D, E and F to the Affidavit of D. Mike Moody - Plaintiff's Exhibit 4). Interest continues to accrue daily at the Note default rate of 21% per annum (Plaintiff's Exhibit 3).

For the reasons stated above, the Motion for Summary Judgment of the Plaintiff, LEC Capital Corporation, is hereby SUSTAINED and Defendant's objection to the Court's jurisdiction is hereby OVERRULED. A separate Judgment in keeping with this Order shall be filed contemporaneous herewith.

DATED this 3rd day of Feb., 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE